JSW 530

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name LOCKHART ERIC
(Last) (First) (Initial)

Prisoner Number V-17246

Institutional Address KERN VALLEY STATE PRISON, DELANO, CA 93216

==========

UNITED STATES DISTRICT COURT

JSW

NORTHERN DISTRICT OF CALIFORNIA

ERIC LOCKHART
Full Name of Petitioner

Case No. CV 08 2935
(To be provided by the clerk of court)

(PR)

vs.

TONY HEDGPETH- Warden
Name of Respondent
(Warden or jailor)

PETITION FOR A WRIT OF HABEAS CORPUS

E-filing

==========

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainers), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

(a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

Alameda County Superior Court (Court) — Alameda County, California (Location)

(b) Case number, if known 139400-B

(c) Date and terms of sentence 12-12-03 Life w/o Parole

(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes X No ____

Where? Kern Valley State Prison (Name of Institution) — Delano, California (Address)

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

Murder with Special Circumstances.

3. Did you have any of the following?

Arraignment: Yes X No ____ Preliminary Hearing: Yes X No ____

Motion to Suppress: Yes ____ No X

4. How did you plead?

Guilty ____ Not Guilty X Nolo Contendere ____

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

Jury X Judge alone ____ Judge alone on a transcript ____

6. Did you testify at your trial? Yes ____ No X

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes X No ____
(b) Preliminary hearing Yes X No ____
(c) Time of plea Yes X No ____
(d) Trial Yes X No ____
(e) Sentencing Yes X No ____
(f) Appeal Yes X No ____
(g) Other post-conviction proceeding Yes ____ No X

8. Did you appeal your conviction? Yes X No ____

(a) If you did, to what court(s) did you appeal?

Court of Appeal	Yes X	No ____	5-10-06 (Year)	Affirmance (Result)
Supreme Court of California	Yes X	No ____	8-23-06 (Year)	Denial (Result)
Any other court	Yes ____	No X	(Year)	(Result)

(b) If you appealed, were the grounds the same as those that you are raising in this petition? Yes X No ____

(c) Was there an opinion? Yes X No ____

(d) Did you seek permission to file a late appeal under Rule 31(a)? Yes ____ No X

If you did, give the name of the court and the result:

_____

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes X No ____

Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. § 2244(b).

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court Alameda County Superior Court

Type of Proceeding Habeas Corpus

Grounds raised (Be brief but specific):

a. Same as those raised this petiton.

b.

c.

d.

Result Denial Date of Result 5-8-07

II. Name of Court California Court of APPEAL-First District

Type of Proceeding Habeas Corpus

Grounds raised (Be brief but specific):

a. Same as those raised in this petition.

b.

c.

d.

Result Denial Date of Result 8-3-07

III. Name of Court California Supreme Court S155456

Type of Proceeding Habeas Corpus

Grounds raised (Be brief but specific):

a. Same as those raised in this petition.

b. _____

c. _____

d. _____

Result Denial Date of Result JAN 30, 2008

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court? Yes ____ No __x__

_____

(Name and location of court)

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you need more space. Answer the same questions for each claim.

Note: You must present ALL your claims in your first federal habeas petition. Subsequent petitions may be dismissed without review on the merits. 28 U.S.C. § 2244(b); McCleskey v. Zant, 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).

Claim One: See attached pages.

Supporting Facts: _____

Claim Two: _____

Supporting Facts: _____

GROUND ONE-PETITIONER'S FEDERAL CONSTITUTIONAL RIGHT TO CONFRONT WITNESSES WAS VIOLATED(see attached memorandum of law at 6-9).

Over defense objection, the prosecution introduced an out of court confession by codefendant Harris(RT-773-74). The confession also incriminated Petitioner by suggesting Harris had an accomplice who planned the robbery and shot the victim. The statement was testimonial, was not subjected to cross-examination, and Harris was not unavailable for cross-examination(Crawford-v-Washington 124 S.Ct. 1354-2004). The statement was argued as incriminating to Petitioner(RT-39,46-48,956-58).

GROUND TWO-PETITIONER'S FEDERAL CONSTITUTIONAL RIGHT TO CONFRONT WITNESSES WAS VIOLATED(see attached memo. of law at 10-17).

Harris' aforementioned statement (ground one) also violated "Bruton -v-U.S."(391 U.S. 123-1968). The statement was facially incriminating to Petitioner as it implied his alleged existence, planning of the robbery, and shooting of the victim(RT-773-74). It was used against Petitioner by the attorneys(RT-39,46-48,956-58,1033,1035, 1000,1003-04). Moreover, a limiting instruction was undermined by the attorneys(id) and was given too late to prevent prejudice(RT-773-74,1056).

GROUND THREE-PETITIONER'S FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS AND EFFECTIVE COUNSEL WERE VIOLATED(see attached memo. of law at 18-27).

The prosecution introduced evidence threats had been made against witnesses Savage and Boatley(RT-448-52,456,531,281,967). There was no evidence Petitioner was aware of, or authorized, the threats (RT-503). The prosecutor capitalized on this evidence in argument (RT-991-92,995,1001,1036). Codefendant Harris' attorney argued Petitioner had authorized the threats(RT-994,1000). The jury was never instructed the evidence was relevant only to witness credibility and not to consciousness of guilt. Counsel did not request such instruction.

GROUND FOUR-PETITIONER'S FEDERAL CONSTITUTIONAL RIGHT TO DUE PROCESS WAS VIOLATED BY INSUFFICIENT EVIDENCE(see att. memo. of law at 28-35).

There was insufficient evidence Petitioner killed the robbery victim, intended to kill, or was recklessly indifferent to human life within the meaning of the special circumstance. The evidence indicated codefendant Harris shot the victim(RT-256-57,711-12,562-63). There was no evidence Petitioner (1) was armed, (2) knew Harris was armed or intended to kill, or (3) directed or encouraged Harris to kill. As to reckless indifference, there is no evidence Petitioner (1) knew Brown had been shot or could have helped after he was shot, (2) came into contact with Brown, (3) knew Harris was armed, or (4) had an opportunity to prevent the shooting or was unsuprised when it occurred.

GROUND FIVE-PETITIONER'S FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS WAS VIOLATED BY INSUFFICIENT EVIDENCE(see att. memo. of law at 36-40).

There was insufficient evidence of felony-murder liability. There was no evidence (1) Petitioner himself shot the victim or (2) (for purposes of accomplice liability) of a causative link between the killing and any robbery-related acts. There is no evidence Brown resisted the robbery and had to be shot, or that the gun was being used to facilitate robbery or escape therefrom. There was insufficient evidence of malice-murder liability. There was no evidence Petitioner intended to kill or did so with premeditation and deliberation.

GROUND SIX-PETITIONER'S FEDERAL CONSTITUTIONAL RIGHT TO DUE PROCESS WAS VIOLATED BY INSUFFICIENT EVIDENCE(see att. memo. of law 41-42).

The felony-murder special circumstance required proof the killing was intended to advance or facilitate the robbery or the escape therefrom(CALJIC 8.80.1). As the record is silent on any relation-

ship between the killing and the robbery, there is no evidence of the requisite intent.

GROUND SEVEN-PETITIONER'S FEDERAL CONSTITUTIONAL RIGHT TO EFFECTIVE COUNSEL WAS VIOLATED(see att. memo. of law at 43-47).

Counsel failed to argue to the jury the ways in which the murder and special circumstance elements had not been proven(see grounds four, five and six). Even if constitutionally sufficient, the sparse evidence provided a substantial basis for acquittal.

GROUND EIGHT-PETITIONER'S FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS AND EFFECTIVE COUNSEL WERE VIOLATED BY SUGGESTIVE IDENTIFICATION PROCEDURES(see att. memo. of law at 48-57).

Petitioner's conviction was based on the identification testimony of Enzore Savage. Within nine days of the crime, Savage was unable to identify Petitioner in a line-up(RT-270,830; att.ex. (attached exhibit) A-2-3,5). After subsequently learning from a newscast Petitioner had been arrested in this case, Savage called and asked investigators if Petitioner had been in the line-up(att.ex. A-5; RT-786-87). He also indicated his ability to identify Petitioner was not certain(id). Savage was subsequently allowed to see Petitioner (1) in custody along with codefendant Harris, whom Savage had already identified(2PHT-55-56[preliminary hearing transcript]) and (2) at the defense table in identifiable jail clothes. It was then, three months after the crime, that Savage identified Petitioner (1PHT-119-20). That identification was introduced at trial as was his trial identification(RT-254,255). Savage saw the suspect full face for only about five seconds from 14-15 feet away(RT-287,250-55; 1PHT-88,100,103), payed more attention to the suspect identified as Harris(RT-253-83; 1PHT-9697), and gave only a general description (att.ex. D at 4; att.ex. B at 6). Savage may have confused his memory of Petitioner from years before with that of the actual suspect(RT-260,785-87). Trial Counsel failed to move for suppression of the identifications.

GROUND NINE-PETITIONER'S SIXTH AMENDMENT RIGHT TO EFFECTIVE COUNSEL WAS VIOLATED(see att. memo. of law at 58-63).

Trial Counsel failed to impeach Savage by cross-examining Savage and Seargent Medieros (1) about Savage's call to investigators to ask if Petitioner were in the line-up, (2) about his expressed uncertainty of his ability to identify Petitioner(RT-786-87; att.ex. A-5), (3) about Savage seeing Petitioner dressed in jail clothes and at the defense table when Savage identified him at the preliminary hearing(1PHT-119-20), (4) about Savage seeing Petitioner in court with Harris, whom Savage had already identified, before Savage identified Petitioner(2PHT-55-56), and (5) about Savage learning from a news broadcast, before he identified Petitioner, that Petitioner had been arrested for Brown's murder(att. ex. A-5). The foregoing cross-examination could have led the jury to conclude Savage's identification resulted from suggestion, rather than his observations of the suspect.

GROUND TEN-PETITIONER'S FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS, IMPARTIAL JURY, JURY TRIAL, EQUAL PROTECTION, AND EFFECTIVE COUNSEL WERE VIOLATED.

Petitioner's rights were violated by the presence of biased jurors on the panel. Trial Counsel failed to challenge biased jurors and to adequately question jurors to uncover bias. The prosecutor used peremptory challenges to exclude black and minority jurors. Trial Counsel failed to object on the basis of "Batson-v-Kentucky." Appellate Counsel failed (1) to challenge the juror panel as biased or to raise the prosecutor's "Batson" violations, or (2) to order preparation of the voir dire transcript and juror questionnaires to investigate possible bias and "Batson" claims.

GROUND ELEVEN-PETITIONER'S FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS, EQUAL PROTECTION WERE VIOLATED BY DENIAL OF HIS REQUEST FOR COURT TRANSCRIPTS AND RECORDS.

Petitioner filed a habeas petition in the state courts containing related claims of juror bias, "Batson" error, and ineffective trial and appellate counsel. Petitioner also filed a motion for preparation and provision of the jury voir dire transcripts and jury questionnaires. Such were needed to prove the constitutional claims but were not provided to Petitioner by appellate counsel or the state courts on direct appeal. The state habeas courts denied the motion for transcripts and questionnaires.

Claim Three: _____

_____

Supporting Facts: _____

_____

_____

_____

If any of these grounds was not previously presented to any other court, state briefly which grounds were not presented and why:

_____

_____

_____

_____

List, by name and citation only, any cases that you think are close factually to yours so that they are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases:

_____

_____

_____

Do you have an attorney for this petition? Yes ____ No x
If you do, give the name and address of your attorney:

_____

WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on 6/5/08
Date

Eric Lockhart
Signature of Petitioner

(rev. 5/96)

S155456

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re ERIC LOCKHART on Habeas Corpus

The petition for writ of habeas corpus is denied.

George, C. J., was absent and did not participate.

BAXTER

Acting Chief Justice

TABLE OF CONTENTS

STATEMENT OF THE CASE

Petitioner and codefendants Antonio Harris and Pauline Coleman were charged with one count of first-degree murder. It was alleged the murder was committed in the course of a robbery and that a principle was armed. The jury returned guilty verdicts on the information as charged against Petitioner and Harris. Both were sentenced to life without the possibility of parole. Coleman pled no contest to voluntary manslaughter and received 3 years after testifying against Petitioner and Harris(RT-400-03,874-75,1107).

EVIDENCE PRESENTED AT TRIAL

About midnight on May 14, 2000, the body of Gerald Brown was found in his cream colored Lincoln in front of his residence at 5555 Bancroft in Oakland(RT-98-100). He died from multiple gunshot wounds which caused death in a very short time(RT-61-62,71-73). Brown was a drug dealer who sold his wares by delivering them to his clients(RT-155,157-58,170-72,496). Rock cocaine and cash were found in the car(RT-749,827).

Neighbors described hearing several gunshots and looking outside to see Brown's car parked at the curb(RT-256,584). When police arrived, they found his keys in the ignition and the "club" was locked in place on the steering wheel(RT-542-43). A ballistics expert testified that the slugs and shell casings found were all fired by the same weapon(RT-692).

Harris' blue Cadillac was seen in the area by several witnesses before and after the shooting. Frankie Bonner testified that she saw a blue Cadillac that did not belong on the block twice

that day(RT-578). She first saw the car about 11:05 p.m. About an hour later after she heard gunshots, she saw it driving on Bancroft (RT-581-83). The car pulled right over next to the white car and then it took off(RT-602). She could not describe the number of people in the car(RT-602).

Enzore Savage testified that prior to the shooting, he saw two men, whom he identified as the defendants, sitting on the side of his building at Hilton and Bancroft(RT-249-51,255). He spoke briefly to the men and one of them asked him for a match(RT-252-53). A while later, after he heard gunshots and he looked out his window, Savage saw Harris standing near the Lincoln. Petitioner was standing between 20 and 50 feet away and yelling, "Let's get out of here" (RT-257-58). Savage's identification of Harris was clear and undisputed(RT-269). However, Savage did not identify Petitioner at a pretrial lineup, but picked out two other men(RT-292-93). After the lineup, he realized Petitioner was also in the lineup. Savage had known Petitioner for almost 15 years(RT-294,271). He did identify Petitioner at the preliminary hearing(RT-254).

Records from Maxferd's pawn shop in San Francisco, established that about 12 hours after Brown's death, Harris pawned four pieces of jewelry belonging to Brown(RT-620,312-13,430-31).

Coleman, Petitioner's former girlfriend, testified under a plea bargain with the prosecution. She and Petitioner had been involved for many years(RT-130-33,138). They used drugs, including cocaine and heroin, together daily during most of that time(RT-134-35). Their relationship was very on-again - off-again beginning in 1999, and at the end of that year, they agreed not to see each other so often(RT-142-43). Petitioner moved to West Oakland to

live with Zolekea Bissierre(RT-149).

Coleman was introduced to Brown in late 1999 by her friend Nettie and she and Petitioner began to buy rock cocaine from him(RT-153-55,355). After Coleman and Petitioner separated, she had on a few occasions exchanged sex for drugs with Brown(RT-175). She had introduced Brown to Kisa Boatley, a friend with whom she did drugs on a regular basis(RT-193,326,328).

Prior to her first jail term in 2000, Brown had fronted drugs to Coleman and she gave him a chain, from which hung the number "63" which had diamonds on it. Brown gave her $25 worth of drugs but she could only regain the chain by repaying him $50(RT-185-90). However, before she was able to repay the money, she went to jail. After she was released, she called Brown and told him she did not have the money and told her that the redemption amount had increased to $75(RT-191). Brown had been pressuring her to repay the money (RT-192-94).

Petitioner came to her house on the evening of May 14, 2000, to collect his clothing(RT-195). He was with Rodney Albritton, who was driving a burgundy Falcon and waited in the car the entire time Coleman and Petitioner were talking(RT-366-67). Petitioner told her that he wanted to rob Brown(RT-126,203-206). She claimed that he had mentioned this before and that they had agreed it would be easy to do. However, she did not think he was serious either time he mentioned it(RT-207,367-68).

However, on May 14, she agreed to help him. He told her he needed Brown to leave his house(RT-211). She suggested that she would tell Brown she had the money she owed him, and would arrange to meet him at the Vintage Inn(RT-217). She asked Petitioner how

he was going to accomplish the robbery. He told her he had a gun, although he did not show it to her(RT-221-22).

Coleman made three phone calls to Brown after Petitioner left. The first call was about 20 minutes after Petitioner left and she asked Brown how he was doing. That call was interrupted by a phone call from Petitioner, who told her not to set up a meeting yet because he was not there yet(RT-225-30). Petitioner told her he'd be back in East Oakland in a little while and he would call her(RT-231). He called again about two hours later and told her to set up the meeting(RT-232-33). Petitioner called again in about 10 minutes and sounded angry because she hadn't called Brown yet - he told Coleman to call Brown right away(RT-235-37). Coleman then called Brown at his house. She told him she had $50 of the $75 she owed him and asked him to meet her at the Vintage Inn(RT-237-38). Brown agreed(RT-239).

Kisa Boatley, who had been staying at Brown's house while she withdrew from methadone(RT-457-58,462), testified that Coleman called Brown at about 11:00(RT-477). She asked Brown to meet her at the Vintage Inn because she had his money(RT-479-81). However, Boatley did not tell police on the night of the shooting that Brown had received any phone calls and did not mention Coleman's name (RT-880-81).

About 30 minutes after Coleman was supposed to meet him, Brown called her from the Vintage Inn, asking where she was. Coleman told him she could not make the meeting because the person with the money had not shown up(RT-240-41). Coleman did not speak to Brown again. She did not speak to Petitioner again until two days later, when he called her. By that time, she knew Brown had been

killed. The police had come to her house the morning after the homicide and questioned her at the station(RT-377). According to Coleman, Petitioner told her he was sorry, that the robbery was not supposed to happen like that, and that the gun jammed and went off (RT-307-08). Coleman was at the police station for a number of hours. During the first four or five hours of the interrogation, she did not tell them about her involvement in the crime or mention Petitioner. About 5:00 or 6:00 p.m., she began to tell them about the incident(RT-377-78,742).

A dead possum, human feces, and a note stating, "Kisa, snitch ass bitch," was left on the porch of the residence of Kisa Boatley's family. This occurred after Brown had been killed(RT-448-53). Boatley testified that she was afraid to testify because of the note(RT-456). She admitted that no threats had been made to her directly by Petitioner(RT-503).

Petitioner introduced several witnesses who testified to his reputation for honesty and non-violence(RT885-886,926-27,941-42, 911-12).

GROUND ONE-PETITIONER'S FEDERAL CONSTITUTIONAL RIGHTS TO CONFRONTATION WERE VIOLATED.

An out of court statement made by codefendant Harris to police officers after his arrest was introduced as evidence over defense objection(RT-773-74). Harris did not testify at trial. The jury was not given a limiting instruction at the time a tape of the statement was played for the jury. The jury was instructed at the end of trial not to consider Harris's statement against Petitioner (RT-1056-CALJIC no. 2.08). The police interview proceeded as follows: "[SERGEANT MEDEIROS]: Okay. We're just going to ask you a couple of questions. All we want is yes-or-no answers, okay? All we want is just yes or no for the tape, okay? The first question would be - and this is going back to Sunday night - (unintelligible) - about what time was it, just so I can ask the question? [HARRIS]: I believe about 11:30 or something. [SERGEANT MEDEIROS]: 11:30? [HARRIS]: Yes. [SERGEANT MEDEIROS]: On this past Sunday night at 11:30 p.m., you drove to the area of 55th and Bancroft, knowing a robbery was going to be committed, in which you had the expectation of receiving 150 to $200 cash? [HARRIS]: Yes. [SERGEANT MEDEIROS]: Shortly after arriving, you heard gunshots? [HARRIS]: Yes. [SERGEANT MEDEIROS]: Immediately after the shots, you drove away, correct? [HARRIS]: Yeah. [SERGEANT MEDEIROS]: Sergeant Cruz, any questions? [SERGEANT CRUZ]: I don't have anything. [SERGEANT MEDEIROS]: Is that the truth? [HARRIS]: Yes. [SERGEANT MEDEIROS]: Okay." Harris's statement thus implied the existence of an accomplice who both planned the robbery and shot Brown. In two previous statements, not played for the jury, Harris expressly impli-

cated Petitioner as the accomplice. Because Harris did not testify and because his statement was clearly made during interrogation for the purpose of investigation and prosecution, admission of the statement violated the Confrontation Clause under "Crawford-v-Washington"(124 S.Ct. 1354-2004).

An out-of-court statement made during interrogation may not be admitted at trial unless the declarant is unavailable and the defendant has had the opportunity to cross-examine him(Crawford at 1369). "Crawford" applies to "testimonial" statements: "An accuser who makes a formal statement to government officers bears testimony in a sense that a person who makes a casual remark to an acquaintance does not. The constitutional text, like the history underlying the common-law right of confrontation, thus reflects an especially acute concern with a specific type of out-of-court statement...Statements taken by police officers in the course of interrogations are also testimonial under even a narrow standard...In sum, even if the Sixth Amendment is not solely concerned with testimonial hearsay, that is its primary object, and interrogations by law enforcement officers fall squarely within that class"(Crawford at 1364-65).

The statement in "Crawford" was made under circumstances similar to those herein. Crawford was on trial for assault and attempted murder, and argued he acted in self-defense. He told police that the victim had tried to rape his wife, Sylvia, and that when he and Sylvia located him in his apartment, a fight broke out. While Crawford told police that he believed the victim had a knife, Sylvia, who was also in custody as a suspect, refuted that claim

(id at 1357). Sylvia did not testify and her hearsay statement was introduced at trial. The United States Supreme Court found her statement was testimonial and that its admission violated the Confrontation Clause(at 1373-74).

The statement in this case clearly falls within the "Crawford" prohibition. Harris made a statement after he had been stopped and arrested on suspicion of murder. It was the product of interrogation and intended to further investigation and prosecution of the instant crime. Although the jury was instructed not to consider the statement against Petitioner, "Crawford" was nevertheless violated. The limiting instruction was not given immediately upon admission of the statement, thus allowing the jury to consider it against Petitioner for the length of the trial(see below).

Moreover, the statement was not used in a properly limited fashion by the parties, thus undoing any limiting instruction. In his opening statement, the prosecutor informed the jury that Harris admitted he went to the area knowing that a robbery would be committed and immediately heard shots and drove away(RT-39). In her opening statement, Counsel for Harris argued that the entire scheme was planned and executed by Petitioner. She argued there was only one shooter and implied that was Petitioner by arguing he had the motive. Harris's attorney also argued it was "pretty obvious from the evidence" who Harris's accomplice was, a clear reference to Petitioner(RT-46-47).

This was a clear attempt to use Harris's statement to prove Petitioner's guilt contrary to "Crawford." The error was exacerbated when Counsel argued that Harris was unaware of Petitioner's alleged plan to kill and that Harris was in his car when Petitioner

allegedly killed Brown(RT-48).

The parties also focused on Harris's statement in closing argument. The prosecutor played the tape of Harris' confession(RT-971) and argued Petitioner was the driving force behind the robbery and that it was his idea(RT-956-58). The prosecutor later argued the jury could believe Harris was the actual shooter and that Petitioner knew he was going to shoot(RT-988-90).

Harris' counsel countered that argument by claiming that Savage only identified Harris as the likely shooter because he was afraid of Petitioner(RT-991-92). She urged the jury to accept Harris' version of the incident that his involvement went no further than being the driver(RT-1003-05). Thus, Harris' statement was clearly used as evidence of Petitioner's guilt.

The error was prejudicial.

The bulk of the evidence against Petitioner consisted of the testimony of Coleman. She was not a reliable witness. She had cut a deal with prosecutors contingent on her implication of Petitioner, was involved in the crime, and had her own motive to rob and shoot Brown: drugs, money, or to retrieve her jewelry. Moreover, Petitioner had broken up with Coleman and moved in with another woman, giving Coleman motive to falsely accuse him. These factors made Coleman's testimony subject to rejection(see Lilly-v-Virginia 119 S.Ct. 1887,1901-1999[statement implicating defendant unreliable when declarant suspected of involvement in crimes and statements made to law enforcement authorities]).

GROUND TWO-PETITIONER'S FEDERAL CONSTITUTIONAL RIGHTS TO CONFRONTATION WERE VIOLATED.

While Harris' statement did not mention Petitioner by name, it implicated him because it was clear from the statement that Harris was fingering an accomplice and that he was fingering Petitioner as the accomplice. The statement thus violated the Confrontation Clause under "Bruton-v-U.S."(391 U.S. 123-1968) and its progeny.

The jury was not admonished when the tape of Harris' statement was played that it was not being admitted against Petitioner. At the close of trial, the jury was instructed as follows: "Evidence has been received of a statement made by a defendant, Mr. Harris, after the arrest. Do not consider the evidence of this statement against defendant Lockhart [Petitioner]"(RT-1056-57).

However, the statement was used by both the prosecutor and Harris' attorney to implicate Petitioner as accomplice and shooter.

"Bruton" bars the admission of a non-testifying codefendant's out-of-court confession incriminating the other defendant. Such evidence violates the other defendant's right to confront the declarant about his accusation(Bruton at 135-36). In "Bruton," the defendants were tried jointly for robbery. Codefendant Evans had confessed and implicated Bruton. The jury was instructed to use the confession against Evans only. The United States Supreme Court found this practice violated the Constitution because Bruton could not cross-examine his non-testifying codefendant about the statement. The Court also held that the limiting instructions were inadequate to protect Bruton because the confession of a codefendant

is so damaging that it is unlikely a jury can follow instructions to disregard it against the nondeclarant defendant(Bruton at 126-30).

In "Richardson-v-Marsh"(481 U.S. 200-1987), the Court partially addressed the problem which presents itself herein. In "Marsh," the codefendant's confession was edited by the trial court to exclude all reference to the existence of Marsh. Marsh claimed that the editing was inadequate and that the statement should have been excluded because it was incriminating to her when considered with her own testimony. The codefendant's statement indicated that on the drive to the victim's house, he had discussed with another named individual the necessity of killing the victims. It was Marsh's testimony, not the codefendant's statement, that indicated Marsh was present in the car during the discussion.

The Supreme Court held that the editing was adequate and that the Confrontation Clause is not violated by a codefendant's confession that has been redacted "to eliminate not only the defendant's name, but any reference to his or her existence," even though the confession may incriminate the defendant when considered in conjunction with other evidence, as long as the jury is instructed not to consider the confession against the nondeclarant defendant (id at 211, fn. omitted, emphasis added).

In "Gray-v-Maryland"(523 U.S. 185-1998), the Supreme Court addressed another manner of editing a nontestifying codefendant's confession. In that case, the codefendant's statement had been redacted to eliminate the defendant's name, but every place the defendant was mentioned the statement contained a blank or the word "deleted"(id at 189). When instructing the jury, the trial judge

specified that the confession was evidence only against the declarant and could not be used against Gray(id). The Court held such editing was insufficient. The Court stated that the statements therein, even with the editing, "so closely resemble 'Bruton's' unredacted statements that, in our view, the law must require the same result. For one thing, a jury will often react similarly to an unredacted confession and a confession redacted in this way, for the jury will often realize that the confession refers specifically to the defendant. This is true even when the State does not blatantly link the defendant to the deleted name, as it did in this case..."(Gray at 192-93).

"Gray" distinguished the obviously inculpatory statement before it from the kind of statement found acceptable in "Marsh": "[T]he factual statement at issue in [Marsh] - a statement about what others said in the front seat of a car - differs from directly accusatory evidence in this respect, for it does not point directly to a defendant at all"(Gray at 195[emphasis added]).

In the instant case, as in "Gray," it was obvious that the statement at issue referred to a perpetrator other than the speaker and that perpetrator was alleged to be the defendant. It is clear that Harris was referring to the acts of a coperpetrator when he said he knew there would be a robbery and that he was in the car when the shots were fired - obviously by that coperpetrator. The statement thus violated "Bruton." As the "Gray" Court explained: "Richardson must depend in significant part upon the kind of, not the simple fact of, inference. Richardson's inferences involved statements that did not refer directly to the defendant himself and which became incriminating "only when linked with evidence

introduced later at trial." [] The inferences at issue here involve statements that, despite redaction, obviously refer directly to someone, often obviously the defendant, and which involve inferences that a jury ordinarily could make immediately, even were the confession the very first item introduced at trial"(Gray at 196).

Even though there were not obvious blank spaces in the confession in this case, Harris' statement "obviously refer[red] directly to someone" and that someone was "obviously the defendant" (Gray at 196). The jury could have made these inferences on the basis of the statement alone and before any other evidence was introduced(id). Moreover, the prosecutor and Harris' attorney worsened matters by explicitly relying on the statement in arguing Petitioner was guilty. Indeed, the jury could only have concluded that Harris' counsel's interpretation of the statement had been confirmed to the attorney by Harris himself.

In sum, Harris' statement implied the existence of an accomplice and that the accomplice planned the robbery and shot the victim. This fact alone was sufficient to violate the Constitution notwithstanding the limiting instruction(Gray, supra; U.S.-v-Richards 241 F.3rd 335,341-3rd Cir.2001[Confrontation Clause violated by codefendant's redacted confession which referred, not directly to defendant, but to his existence]; Standford-v-Parker 266 F.3rd 442,457-6th Cir.2001[same]; U.S.-v-Parks 285 F.3rd 1133,1139-9th Cir.2002[same]; see U.S.-v-Gonzalez 183 F.3rd 1315,1322-11th Cir. 1999[Confrontation Clause violated when codefendant's redacted confession contained physical description which obviously referred to Gonzalez]).

Moreover, the arguments of Harris' counsel and the prosecutor fatally undermined the limiting instruction(RT-47-48,1000,1003-04; RT-39,1033; RT-1035[prosecutor arguing jury could conclude Harris was merely the driver]). "Marsh" recognized the possibility counsel arguments can unconstitutionally undermine a "Bruton" limiting instruction(at 211[remanding for consideration of whether prosecutor's attempt "to undue the effect of the limiting instruction by urging the jury to use [the codefendant's] confession" justified relief]; U.S.-v-Sherlock 865 F.2nd 1069,1080-9th Cir.1989[Constitutional error when prosecutor "flouted the limiting instruction" and used statement against defendant]).

Notwithstanding whether the statement was facially incriminating, the Constitution was still violated. That is because this case lacked "a proper limiting instruction"(Marsh at 211). The instruction in this case was insufficient because not given contemporaneously with admission of Harris' statement(compare Marsh at 203-04[wherein limiting instruction given "at the time" codefendant's confession was admitted]).

When a statement is not incriminating on its face but "only when linked with evidence introduced at trial"(id at 208), i.e., the statement is redacted, it will still violate the Constitution unless accompanied by a proper limiting instruction(id): "Where the necessity of such linkage is involved, it is a less valid generalization that the jury will not likely obey the instruction to disregard the evidence...[With a facially incriminating statement], "the only issue is, plain and simply, whether a jury can possibly be expected to forget it in assessing the defendant's

guilt; whereas with regard to inferential incrimination the judge's instruction may well be successful in dissuading the jury from entering onto the path of inference in the first place, so that there is no incrimination to forget"(at 208).

In this case, the jury was not given an instruction applying to Harris' statement until days after it was admitted(RT-773-74, 1056) and after conclusion of the evidentiary phase. Absent timely instruction, the jury no doubt entered onto the forbidden "path of inference" immediately upon admission of Harris' statement, particularly given Harris' counsel's opening argument. "Marsh" holds that timely instruction would have blocked that path. The jury cannot be expected to have disregarded the inference, once made, due to instructions given after the fact(Bruton at 130). "A redaction, no matter how perfect, nevertheless requires an appropriate limiting instruction...the 'Richardson' limiting instruction must be given immediately following the introduction of the co-defendant's confession to safeguard against inappropriate use of the confession against the non-confessing co-defendant"(Fowler-v-Ward 200 F.3rd 1302,1307-10th Cir.2000[finding 'Bruton' violation when statement properly redacted but no instruction given when statement admitted]; Spears-v-Mullin 343 F.3rd 1215,1232-10th Cir.2003 [same]; U.S.-v-Walker 148 F.3rd 518,524-25-5th Cir.1998; see U.S. -v-Doherty 233 F.3rd 1275,1283-11th Cir.2000['Bruton' error not cured by instruction at end of trial to disregard facially incriminating statement]).

As such, the Constitution was violated.

Admission of Harris' statement was prejudicial. Savage and

Coleman were the only witnesses connecting Petitioner to the offense. Because Coleman was an accomplice as a matter of law(RT-1068-69), rejection of Savage's testimony would have required acquittal(Penal Code §1111[defendant cannot be convicted solely on testimony of accomplice absent independent corroboration]).

A. Robbery and Murder.

Savage's identification of Petitioner was very problematic. He failed to do so at the line-up(RT-292-93). Savage only identified Petitioner at the preliminary hearing(RT-254) after recognizing Petitioner as someone known to Savage for 15 years(RT-271). This provided a basis for the jury to conclude the identification was based, not on observation of the crime, but on Savage's pre-existing acquaintance with Petitioner and Petitioner's presence in the line-up and in court(see People-v-McDonald 37 C.3rd 351,374 fn.20-1984 [discussing phenomenon of "unconscious transfer" where an identifying witness "confuses a person seen in one [non-crime] situation with a different person seen in [a criminal context]"]; U.S.-v-Montgomery 150 F.3rd 983,992-9th Cir.1998[identification procedure suggestive when witness shown photos of Montgomery and allowed to view him in courtroom before identifying him for jury]).

Coleman implicated Petitioner in robbery and claimed Petitioner incriminated himself(RT-126,203-06,211-22,225-37,307-08). Her credibility was highly suspect given her own complicity(RT-217-22, 225-30,237-38) and independent motive both to rob Brown (i.e. drugs, money, and to retrieve her jewelry-RT-175,185-94) and to falsely accuse Petitioner (i.e. their domestic troubles, her need to curry favor with police-RT-142-49,375,401-04). That a defendant's all-

eged out of court admissions are to be viewed with skepticism(RT-1062-63; CALJIC no. 2.70, 2.71.7) provided the jury an additional reason to disbelieve Coleman.

As such, the jury could reasonably have rejected Coleman's and/or Savage's testimony. Harris' statement, which suggested Petitioner's involvement in robbery and corroborated Coleman and Savage, was very prejudicial.

Harris' statement was also prejudicial as to murder liability. By suggesting Petitioner shot Brown, the statement rendered Petitioner automatically liable for felony murder(People-v-Dominguez 22 C.R.3rd 249,255-2004). The other evidence indicated Harris was the shooter(see RT-256-57) and thus allowed for the conclusion Petitioner was innocent of murder even if guilty of robbery(see below at 36-40 ; People-v-Cavitt 33 C.4th 187,196-2004).

B. Felony-Murder Special Circumstance.

Harris' statement was particularly prejudicial as to the special circumstance, which required proof Petitioner himself killed, or (if he did not) intended Brown be killed, or was recklessly indifferent to life(CALJIC no. 8.80.1).

Savage indicated Harris shot the victim. His and Coleman's testimony was otherwise silent on intent to kill and reckless indifference(see below at 30-35). In contrast, Harris' statement indicated Petitioner shot Brown, thus obviating the need to prove intent or indifference(CALJIC no. 8.80.1). Given the lack of other evidence on the issue, the jury necessarily relied on Harris' statement to find the special circumstance true.

GROUND THREE-PETITIONER'S FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS AND EFFECTIVE COUNSEL WERE VIOLATED.

The prosecution introduced evidence that threats had been made to two of its witnesses. Deputy Wong testified that on July 17, 2000, a dead possum and human feces, along with a note reading, "Kisa, snitch ass bich (sic)," had been left on the porch of Kisa Boatley's family's home(RT-448-52). Boatley testified immediately after this evidence was introduced that she was afraid to be testifying, because there was a note on her door that said, "Die Bitch," as well as a dead rat(RT-456). She was aware of no threats made to her in behalf of Petitioner(RT-503).

DA Investigator Ocala testified over defense objection that he had a hard time serving Enzore Savage and had to obtain a warrant to secure his attendance at trial. When Ocala went to his place of work, Savage stated he wouldn't come to court and that he was concerned about Michael Lockhart and that threats had been made to him and his family. He stated that he was concerned that if he testified he and his family would be killed(RT-531). Savage had testified previously and identified both defendants as present at the scene of the shooting(RT-251,255). After spending a night in jail(RT-298), he testified at trial without doubt that Harris, not Petitioner, was the man standing at the car after the gunshots(RT-275-77). He denied that he was falsely testifying because he was afraid for his safety(RT-299). However, Savage made clear that he was in court against his will(RT-281). The prosecutor asked him if he was afraid of Petitioner or his family. An evasive Savage answered "yes" and "no"(RT-280-81,282).

Harris' defense counsel took the threat evidence even further and argued that the reason Savage identified Harris, rather than Petitioner, as the shooter and failed to identify Petitioner in a lineup was because he was afraid of Petitioner's brother(RT-991-92, 995,1001). She also commented on Savage's demeanor at trial, "I want to point out that Mr. Savage was so frightened to come to court, he couldn't even face and look at Mr. Harris and Mr. Lockhart. He turned his head to the wall the whole time(RT-1001). The prosecutor likewise argued, in rebuttal, that Savage had told Ocala he was afraid of Michael Lockhart(RT-1036).

In further attempting to establish Lockhart as the more guilty party, defense counsel for Harris tried to establish that he not only had a reason to go after the victim because of his relationship with Kisa Boatley, but also that Petitioner was responsible for the note and witness intimidation against her; "...There's also the inference that [Petitioner] - and you can look at Pauline Coleman's testimony to...and I submit to you, [Petitioner] had the information to know where Kisa Boatley was living to make sure that she had a dead possum and some feces on her step. And I submit to you, there is an inference delivered by the guy we heard about, Michael Lockhart, to scare her from testifying"(RT-994,1000).

Petitioner's counsel argued that the Boatley incident added nothing to the evidence of guilt because there was no evidence who did it(RT-1013).

In spite of this extreme focus on the threats that were made

to these witnesses, no instruction was given to the jury about how the information could be used. The jury was neither told of its relevance or told of any limitations on its use. The Trial Court should have provided instruction sua sponte to inform the jury about the proper use of this extremely prejudicial information and to limit it to the proper scope of its relevance. In the alternative, defense counsel was ineffective when he failed to request such instruction.

As demonstrated, the district attorney and counsel for Harris used the threat evidence to convince the jury Petitioner had something to hide or to fear from Savage's and Boatley's testimony, thus supporting an inference of his guilt.

Evidence of such threats can be relevant in two ways. Such evidence may be admissible to show a defendant's consciousness of guilt(CALJIC no. 2.06) or may be relevant on the issue of witness credibility. The Trial Court failed to insure the threat evidence would be properly used by the jury because it failed to provide any guidance as to the reasons for its admittance and did not limit the jury's consideration of the evidence.

"Generally, evidence of the attempt of third persons to suppress testimony is inadmissible against a defendant where the effort did not occur in his presence.[citation] However, if the defendant has authorized the attempt of the third person to suppress testimony, evidence of such conduct is admissible against the defendant"(People-v-Hannon 19 C.3rd 588,599-1977). "[I]n order for a jury to be instructed that it can infer a consciousness of guilt from suppression of adverse evidence by a defendant, there must be some evidence in the record which, if believed by the jury, will sufficiently

support the suggested inference. Furthermore, the determination of whether there is such evidence in the record is a matter which must be resolved by the trial court before such an instruction can be given to a jury"(Hannon at 597-98). Further, where the suppression effort is not personally made by the defendant, there is another threshold which must be crossed. There must be evidence sufficient to establish that it was the defendant who authorized any efforts to frighten or intimidate a witness(ibid; compare People-v-Williams 16 C.4th 153,198,201-1997[intimidation evidence admissible when sufficient evidence to infer defendant authorized intimidation]).

The evidence in this case was admitted without any foundation connecting it to Petitioner. The fact that Petitioner's brother had named Savage as someone he was concerned about is not sufficient to establish that Petitioner in any way requested or authorized him to intimidate anyone on his behalf. Certainly the use of Michael Lockhart by Harris' attorney to insinuate in her closing argument that he was also responsible for the Kisa Boatley incident lacked any foundation whatsoever. Yet she argued the jury should draw a consciousness of guilt inference. This was error(People-v-Terry 57 C.2nd 538,565-66-1962["Relationship to the defendant [of the intimidator] does not prove authorization [citations] and the interest of the third person in the defendant clearly stands on no higher ground"]).

As demonstrated, the evidence of witness intimidation and threats was inadmissible as consciousness of guilt evidence. Accordingly, the Trial Court stated it was admitting the evidence only as to Savage's credibility(RT-573-74). Although the Court

indicated it would give a limiting instruction to this effect, it did not do so and, as demonstrated above, the prosecutor and Harris' counsel clearly used it for more than credibility evidence. While evidence of a fear of testifying may be relevant to credibility, the jury should be instructed on the purpose of its admission and told when it should not be considered as proof of guilt. This is so because of the highly prejudicial nature of the evidence(People -v-Warren 45 C.3rd 471,481-1987).

Admission of the evidence, the failure to instruct, and the improper use of the evidence violated Due Process in this case. In "Dudley-v-Duckworth"(854 F.2nd 967-7th Cir.1988), a codefendant who had entered a plea bargain with the prosecution testified against the defendants. In response to the prosecutor's questions, the witness explained that he felt nervous about testifying because he had received some phone calls and was concerned for the safety of his aunt and girlfriend. He was afraid that whoever made the phone calls might hurt his mother(id at 969).

The Seventh Circuit found that admission of the threat evidence violated the Fourteenth Amendment because the threats came from an unknown source and were not linked to Dudley or his codefendants except by prejudicialinnuendo. The state argued that it was relevant to explain the witness' demeanor on the stand. The Court responded that the record did not establish that the witness' demeanor was unusual or problematic. The Court thus suspected the prosecutor of using subterfuge to ensure the admission of the highly prejudicial evidence(id at 970-71). Petitioner submits that this is also a problem in regards to Boatley's testimony in this case. Just as the prosecutor did in "Dudley," as soon as Boatley took

the stand, the prosecutor questioned her about how she felt about testifying, and she referred to the note and a dead animal, which had been described immediately before she testified by Officer Wong(RT-448-56). The record contains no information that Boatley had resisted testifying, that her demeanor was unusual, or that she had changed her testimony in any way.

Perhaps to give even greater weight to the information about Boatley's threats, immediately after she testified, the prosecutor called Officer Ocala to testify about Savage's behavior and concern about Michael Lockhart(RT-529-32).

There is another similarity between this case and "Dudley." The Court noted that when the witness testified, he initially stated he was nervous because the prosecutor had said something to him that morning(at 971). Similarly, in this case, there was a possibility Savage's demeanor and his being upset was the result, not of threats, but of his being arrested and put in jail in order to secure his attendance at trial

The "Dudley" Court called evidence of threats "an evidential harpoon" and held that admission of the evidence was of constitutional dimension because it undermined the defendant's credibility and the only two witnesses who implicated the defendant in the crime were immunized accomplices(Dudley at 972; compare People-v-Olguin 31 C.A.4th 1355,1368-1994[admission of threat evidence not error when limited to proof of witness credibility, jury was properly instructed to that effect, and evidence not argued as consciousness of guilt]).

In sum, the failure to instruct in this case and the improper consciousness of guilt arguments were extremely prejudicial

and violated Due Process(Garceau-v-Woodford 275 F.3rd 769,780-9th Cir.2001[Due Process violated when jury invited to draw improper inferences from otherwise admissible evidence]; Dudley at 970 ["'[Threat] evidence becomes so prejudicial to a defendant that no jury could be expected to apply it solely to the question of the credibility of the witness before it and not to the substantial prejudice of the defendant'[citation]"]).

Trial Counsel was ineffective for failure to request instruction limiting use of the threat evidence(U.S.-v-Span 75 F.3rd 1383, 1390-9th Cir.1996[attorneys ineffective for failure to request proper instruction]; White-v-McAninch 235 F.3rd 988,997-98-6th Cir. 2000[counsel deemed ineffective for failure to request limiting instruction with respect to evidence]; Freeman-v-Class 95 F.3rd 639,641-8th Cir.1996[counsel deemed ineffective for failure to request cautionary instruction]).

An attorney is ineffective if his performance falls below an objective standard of reasonableness and, absent counsel's error, it is reasonably probable the jury would have acquitted(Strickland -v-Washington 466 U.S. 668,687-88,694-1984).

Forecite, a book on California jury instructions, suggests that in the case of third-party threats, defense counsel should request the following instruction: "If you find that an effort to suppress evidence was made by another person for the defendant's benefit, you may not consider that effort as tending to show the defendant's consciousness of guilt unless you also find that the defendant authorized such effort"(Forecite 2.03d).

For the above stated reasons, Counsel's failure to request

such instruction was deficient(White-v-McAnninch at 997-98).

In "Dudley," the Seventh Circuit found the admission of threat evidence was so overwhelmingly prejudicial, that it granted a petition for writ of habeas corpus. The Court found the evidence of guilt was "impressive, but not overwhelming," noting that in a lengthy trial the only two witnesses to connect Dudley to the offense were accomplices testifying in exchange for immunity or dismissal of charges(ibid).

A similar result should occur in this case. There was no eyewitness to the shooting. The only witness who claimed to see the people involved, Savage, identified Harris as the shooter. Evidence Petitioner was allegedly trying to induce him not to testify undermined his defense theory he was not involved in the crime and was used by Harris' attorney to argue that Savage identified Harris only because he was afraid of Lockhart. The physical evidence connected only Harris to the shooting. It was Harris' blue Cadillac that was seen outside near the crime scene and it was Harris, 12 hours after the murder, who pawned the victim's jewelry. Most significantly, Harris confessed his participation in the crime, although he minimized his involvement.

The prosecution's case against Petitioner rested entirely on the testimony of Pauline Coleman, who was sharply impeached and herself implicated in the crime(above at 9 ; Dudley at 972).

In rebuttal, the prosecutor made much of the fact Harris pawned the jewelry at a pawn shop at which Petitioner had done business before(RT-1032). However, it was undisputed that Harris was the person at the pawn shop. There was no evidence as to why

he went to that particular shop or that Petitioner accompanied him. Indeed, the evidence showed Petitioner had only used the shop once in 1995 and once in 1998(RT-627). The last visit was thus almost two years before the instant crime. Moreover, it was Coleman who conducted the 1998 transaction and it was only the word of Coleman Petitioner was involved in that transaction(RT-631-33,144-45).

Finally, Brown's activities as a drug dealer and loan shark, as well as his numerous relationships with women provided ample motive for others to rob and/or kill him. Keith Wilson, against whom Brown had obtained a restraining order because he pulled a gun on him, was a likely suspect who had not even been investigated (RT-1025-26;819-20).

After a close examination of the evidence, it cannot be concluded the errors were harmless beyond a reasonable doubt. For the same reasons, Counsel's omission was prejudicial under "Strickland."

FOOTNOTE ONE-The State Appeals Court relied on an alleged Trial Court "instruction" "limiting" consideration of Ojala's testimony to Savage's credibility(Ct. Opinion at 32). However, the Trial Court's statement did not address threat and fear testimony from Boatley and Savage himself(RT-280-82,298-99). Further, the Ojala "instruction" did not unequivocally limit consideration of Ojala's testimony. The Trial Judge stated: "This [Ojala's testimony] was a subject of our in-chambers session, and I <u>think</u> it has some limited relevancy, which would -- it's limited to the testimony of -- I <u>believe</u> it's <u>going to</u> be limited to the testimony of Mr. Savage and how this might bear on his believability...and credibility"

(RT-530). The Judge merely said he "believed" the testimony was "going to" be so limited. Such is hardly an unequivocal directive to the jury. Indeed, the Court was merely speaking to the attorneys, not the jury(id).

Further, the Judge himself did not consider the above language an instruction. The Judge later stated about Ocala's testimony: "I think the Court will give a limiting instruction. I plan to. And if you have some special instruction because there is, at this point, no evidence at all that your client, Mr. Eric lockhart, is in any way involved, or has made any threats, you know, through his brother, certainly nothing directly, if he wants a special instruction to that respect, I'll certainly consider it, Mr. Sherrer"(RT-573-74). Obviously, the Judge would not have to "think about," "plan," or "consider" giving a limiting instruction he has already given.

GROUND FOUR-PETITIONER'S FEDERAL CONSTITUTIONAL RIGHT TO DUE PROCESS WAS VIOLATED BY INSUFFICIENT EVIDENCE.

Due Process is violated by conviction based on evidence from which no reasonable jurist "could have found the essential elements of the crime beyond a reasonable doubt"(Jackson-v-Virginia 443 U.S. 307,319-1979).

There was insufficient evidence to support the felony-murder special circumstance in this case. To impose it, the prosecution had to prove either (1) that Petitioner himself killed Brown during a robbery, (2) that Petitioner aided Harris' shooting of Brown with intent to kill, or (3) that Petitioner aided the robbery as a "major participant" and with "reckless indifference to human life" (CALJIC no. 8.80.1; Pen.Code §190.2(a)(17); People-v-Williams 16 C.4th 635,689 fn.21-1997).

a. Actual Killer.

There was no evidence Petitioner shot the victim. Indeed, the prosecutor argued Harris was the shooter(RT-1040,1035-36). The Trial Judge stated the evidence was "murky" as to who shot Brown (RT-1110). Savage, who identified Harris and, arguably, Petitioner at the scene(RT-250-58), did not actually see the robbery or killing. Savage indicated Harris was the shooter by testifying Harris was standing next to Brown's car just after shots were fired(RT-256). According to Savage, Petitioner was some 20 yards away from the car and Brown(RT-257). Testimony established a gun fired from twenty yards away could not have ejected shell casings into the car where they were found(RT-711-12,562-63). Ballistics evidence established

there was a single shooter(RT-690-95,702). This evidence was insufficient.

Similarly, "People-v-Smith"(135 C.A.4th 914-2005) found insufficient evidence Smith had actually killed the victim (or had intent to kill) when an accomplice was equally likely to have done so (at 927[noting that "[A] 'coin flip' situation like this does not constitute substantial evidence"]). "People-v-Allen"(165 C.A. 3rd 616-1985) concluded there was insufficient evidence Allen, rather than the accomplice, had shot the victim when, as in this case, the precise circumstances of the shooting were unclear: "Since the evidence of what happened in the kitchen proved at most a 50 percent probability that [Allen] was the [shooter], the state's burden was not met"(at 626; see U.S.-v-Hall 999 F.3rd 1298,1299-8th Cir.1993[evidence insufficient Hall inflicted fatal injuries when wife present and equally likely to have done so]; Fagan-v-Washington 942 F.2nd 1155,1159-60-7th Cir.1991[same when victim killed with different gun than defendant's and other armed individuals present]).

Indeed, the evidence was insufficient Petitioner was even armed during the crime. Savage did not testify Petitioner was armed. Coleman claimed Petitioner merely said he would use a gun (RT-222). She claimed to have last seen Petitioner with a revolver some years before the shooting(RT-373-74,852). The murder weapon was an automatic(RT-677).

It was, at best, "50-50" as to who shot Brown. The evidence was thus insufficient to prove Petitioner the shooter(Allen, supra; Hall, supra; CALJIC no. 2.01["[I]f the circumstantial evidence [as to any particular count] permits two reasonable interpretations,

one of which points to the defendant's guilt and the other to his innocence, [the jury] must adopt that interpretation that points to the defendant's innocence"]).

b. Intent to Kill.

Assuming Harris shot Brown with intent to kill, no evidence indicated Petitioner intended Brown be killed(CALJIC no. 8.80.1). Coleman testified Petitioner indicated Brown would not retaliate against the robbers(RT-208). Coleman testified that, after the killing, Petitioner stated the robbery was not supposed to happen that way(RT-301). These statements, if true, suggest Petitioner intended Brown survive the encounter.

Evidence regarding the crime itself did not indicate an intent to kill. Evidence indicated Petitioner was 20 yards away when Brown was shot(RT-257). There is no evidence Petitioner was armed, knew Harris was armed or intended to kill, or directed or encouraged Harris to do so(People-v-Prettyman 14 C.4th 248,259-1996 [accomplice liability requires defendant know and share perpetrator's criminal intent and encourage or facilitate commission of the offense]).

Analogous is "People-v-Williams"(16 C.4th 635-1997). Williams was convicted as an accomplice of murder and a special circumstance requiring proof he intended to kill(at 688-89). Williams' prosecutor "never presented...any...evidence regarding defendant's role in the murders,..."(id). The evidence of intent to kill was thus insufficient(at 690 fn.22).

In this case, no evidence was presented regarding Petitioner's role in the shooting (as opposed to the robbery). "[T]he manner

in which the actual perpetrator committed the murder...did not itself reveal an intent to kill by defendant as an aider and abettor" (Williams at 690). The evidence was thus necessarily insufficient.

Analogous also is "Mitchell-v-Prunty"(107 F.3rd 1337-9th Cir. 1997). In that case, a California prosecution, the victim was driven over and crushed by a car. Although Mitchell was a passenger at the time, the Ninth Circuit concluded there was insufficient proof Mitchell "instigated, encouraged, or assisted the driver in crushing [the victim] with the car"(at 1342): "There is no proof that the vehicle that killed [the victim] was owned or provided by Mitchell for the purpose of doing the running over [or] that Mitchell said anything to the driver of the vehicle in the minutes [before the killing]; In short, there is nothing at all to suggest that Mitchell helped bring about [the] death...There is, in other words, a massive failure of proof that Mitchell aided and abetted [the] killing"(at 1342).

In this case, there is no evidence Petitioner provided the gun or by word or deed encouraged the shooter or otherwise brought about Brown's death. Of course, his mere presence during the shooting does not establish intent(Mitchell at 1342; CALJIC no.3.01). There is thus a "massive failure of proof" of intent to kill(compare Moore-v-Deputy Comm. 946 F.2nd 236,245-3rd Cir.1991[sufficient evidence non-shooter was accomplice to killing when he loaded rifle at scene of crime and urged it be used]).

c. Reckless Indifference.

There is insufficient evidence of "reckless indifference." Proof of reckless indifference requires an evidentiary showing

the defendant "knowingly engaged in criminal activities known to carry a grave risk of death"(People-v-Estrada 11 C.4th 568,592-1995). This is a subjective standard requiring proof defendant was actually aware of the risk of death(at 591; see at 592["[O]ne cannot be indifferent to something of which he or she is unaware"]). The standard is not met by proof the defendant was merely negligent, "neglectful, heedless or rash"(id).

Several cases have set forth the circumstances demonstrating reckless indifference. "People-v-Mora"(39 C.A.4th 607-1995) found sufficient evidence of reckless indifference when Mora arranged for his armed accomplice to enter the victim's home, did not attempt to aid the victim after he was shot, and instead continued on with the robbery(at 617). "People-v-Proby"(60 C.A.4th 922-1998) found reckless indifference when Proby provided his accomplice with a gun, saw the accomplice shoot the victim but made no attempt to aid the victim and continued on with the robbery. Proby also knew of the accomplice's willingness to do violence and that the accomplice might be recognized and have to kill to avoid apprehension(at 929-30). "People-v-Bustos"(23 C.A.4th 1747-1994) found reckless indifference when Bustos hit and struggled with the resisting victim, knew his accomplice was armed and might come to Bustos' aid, and did not express suprise when the accomplice stabbed the victim(at 1754). "People-v-Smith"(135 C.A.4th 914-2005) found reckless indifference when Smith, who remained outside, could hear his accomplice noisily beating and stabbing robbery victim, the accomplice emerged covered in blood, and Smith fled rather than aiding the victim(at 927-28).

This case exhibits none of the earmarks of reckless indif-

ference present in the above-cited cases. There is no evidence Petitioner knew that, when Harris fired, Brown had been shot(Mora; Proby). There is no evidence Petitioner knew he could help Brown, who died almost instantly(RT-72-73). Conversely, there is no evidence Petitioner left without attempting to aid or checking on Brown (Mora; Smith). There was no evidence Petitioner provided Harris a gun or knew Harris was armed(Proby; Bustos). There is no evidence Petitioner continued with the robbery after Brown was shot (Mora; Proby). Indeed, there is no evidence Petitioner himself contacted Brown or took property from him. He was allegedly standing some distance away when shots rang out(RT-257). At worst, this suggests Petitioner had already completed any takings before Brown was unnecessarily shot. There is no evidence Brown knew Harris. There is thus no evidence Petitioner knew Harris might shoot Brown to avoid being identified(Proby). There is no evidence that Petitioner or Harris assaulted Brown before the shooting or that Brown resisted the robbery(Bustos; Smith). There is no evidence Petitioner had an opportunity to prevent the shooting(Smith) or was unsuprised when it occurred(Bustos; compare Tison-v-Arizona 481 U.S. 137,151-1987[reckless indifference when defendant had opportunity, but failed, to assist victims during or after shootings]).

In sum, the evidence is perfectly consistent with the absence of any of the above factors and is thus consistent with the absence of reckless indifference. Evidence equally consistent with innocence does not support an inference of guilt(CALJIC no. 2.01; Stallings-v-Tansy 28 F.3rd 1018,1022-10th Cir.1994).

Analogy to cases involving the natural and probable con-

sequences doctrine (NPC) is also instructive. "'Liability for the natural and probable consequences of an intended act is regarded as legally equivalent to liability for reasonably foreseeable consequences, and is another way of expressing liability for negligence'[citation]"(People-v-Smith 57 C.A.4th 1470,1479-1997). In addition, "recklessness transcends negligence [and] requires that the defendant subjectively appreciate the dangerousness of the circumstances"(at 1480; People-v-Estrada at 591-92). Because the evidence herein was insufficient under the NPC standard, it was also insufficient under the CALJIC no. 8.80.1 recklessness standard.

Under NPC doctrine, a defendant may be held criminally liable for an unintended crime that is a "foreseeable" consequence of the "target" crime the defendant did intend to aid and abet(People-v-Prettymen 14 C.4th 248,261-1996). Foreseeability "is a factual question to be resolved by the jury in light of all the circumstances surrounding the incident"(People-v-Nguyen 2 C.A.4th 492, 500-04-1992).

Under this standard, the robbery in this case was the intended "target" crime. The shooting was unintended and thus must be proven foreseeable. Murder is not always a foreseeable consequence of robbery: "Robbery is a crime that can be committed in widely varying circumstances"(Nguyen at 532). There is no evidence the killing herein was foreseeable and thus that Petitioner was recklessly indifferent. There is no evidence Petitioner was armed, knew Harris was armed or had an intent to kill or tendency for violence. Indeed, enlistment of an accomplice suggests an intent simply to physically overpower Brown. As stated in "Prettyman": "If, for example, the jury had concluded that defendant Bray had

encouraged codefendant Prettyman to commit an assault on [the victim] but that Bray had no reason to believe that Prettyman would use a deadly weapon such as a steel pipe to commit the assault, then the jury could not properly find that the murder of [the victim] was a natural and probable consequence of the assault encouraged by Bray"(at 267; People-v-Butts 236 C.A.2nd 817,837-1965[killing not foreseeable when defendant unaware accomplice armed]; People -v-Godinez 2 C.A.4th 492,504-1992[jury could reasonably conclude fatal stabbing not foreseeable when Godinez testified he was unaware accomplice armed]).

In this case, evidence indicated only a planned robbery(RT-207-11). Evidence did not reveal the precise manner it was to be committed or the manner it was in fact committed. Evidence of the circumstances of the commission of the intended felony is necessary to prove an unintended crime was foreseeable(Nguyen at 531). The silence of the record on this point must cut against the prosecution which, of course, has the burden of proof(CALJIC no. 2.01). As such, the evidence of foreseeability and thus reckless indifference was insufficient(compare People-v-Durham 70 C.2nd 171,185-1960[shooting reasonably foreseeable when defendant knew accomplice armed and accomplice had exhibited and fired guns during prior robberies]).

FOOTNOTE ONE-Analogous is "Juan H-v-Allen"(408 F.3rd 1262-9th Cir. 2005), in which evidence showed Juan H. and his brother had confronted two gang rivals during which the brother shot at the men, killing one. The Ninth Circuit found Juan H's mere presence during the shooting was insufficient to establish his accomplice liability

for murder and attempt murder (felony-murder was not at issue): "...That juan H. stood behind his older brother after the family home had been attacked (the alleged motive for the shooting), even if he knew his brother was armed, does not permit the rational inference that he knew his brother would, without provocation, assault or murder the victims"(at 1278). Moreover, "the record does not reflect any evidence that Juan H. intended, through his actions, to assist [his brother] in committing first degree murder. Juan H. did not do or say anything before, during, or after the shooting from which a reasonable factfinder could infer an intent or purpose to aid and abet [the shootings]"(at 1278-79).

In this case, the mere evidence Petitioner confronted Brown with Harris and was present during the shooting does not provide an inference he knew Harris would kill Brown or intended to do so. This is true even if one assumes Petitioner knew Harris was armed (an assumption for which there was no evidence). As in "Juan H.," there is no evidence Petitioner did or said anything, "before, during, or after the shooting..." from which an intent to kill may be inferred(see Piaskowski-v-Bett 256 F.3rd 687,691-92-7th Cir. 2001[Evidence defendant present with conspirators during beating of victim insufficient to prove he participated in beating, killing, or conspiracy to kill]).

GROUND FIVE-PETITIONER'S FEDERAL CONSTITUTIONAL RIGHT TO DUE PROCESS WAS VIOLATED.

A. Felony Murder Theory.

The jury was given the option of convicting Petitioner on a "felony-murder-robbery" theory(RT-1071-73). A robber who himself kills during a robbery is guilty of first degree murder(People-v-Pulido 15 C.4th 713,720-1997; People-v-Dominguez 22 C.R.3rd 249, 255-2004). As demonstrated(above at 28-30), there was insufficient evidence Petitioner himself killed Brown. To impose felony-murder liability on a non-shooter accomplice, the killing must be temporally and causally related to the felony the accomplice aided. There is insufficient evidence of a causal connection in this case.

The felony-murder rule imposes murder liability for a killing committed during a felony on any person jointly engaged with the killer in the commission of the felony(RT-1072-73; CALJIC no.8.27). However, there must be a "logical nexus between the felony and the homicide"(People-v-Cavitt 33 C.4th 187,199-2004). Accordingly, the felony-murder rule "does not apply to non-killers where the act resulting in death is completely unrelated to the underlying felony other than occurring at the same time and place"(id at 196). While proof that the killing was intended to facilitate the felony is unnecessary, "a confederate who performs a homicidal act that is completely unrelated to the felony for which the parties have combined cannot be said to have been 'jointly engaged' in the perpetration or attempt to perpetrate the felony at the time of the killing"(id at 197-98,200,202[citing as example of "causal relation" a shooting intended to aid escape from robbery scene]).

The record must evidence "objective facts that connect the act resulting in death to the felony the non-killer committed or attempted to commit"(id at 205). "[T]he circumstances connecting the felony to the killing must be shown by sufficient evidence to justify a reasonable inference that the relationship went beyond mere coincidence of time and place: 'The causal relationship is established by proof of a logical nexus'"(People-v-Dominguez 22 C.R.3rd at 259 quoting Cavitt at 205[Dominguez' emphasis]).

"Cavitt" found the requisite nexus from evidence the robbery victim accidentally suffocated as a result of being bound and gagged and beaten in order to facilitate the robbery(at 202). Moreover, even if the killer killed out of "personal animus" unrelated to robbery, causation was demonstrated. The robbers' tying and beating of the victim "left her unable to resist [the killer's] murderous impulses"(at 204,209-10).

In "People-v-Dominguez," Dominguez was convicted of rape and felony-murder. The victim was beaten and strangled. Dominguez testified he had consensual sex with the victim and then left her alive with his alleged co-perpetrator, Martinez(at 253). The Court of Appeal found the Trial Court had erred in not instructing on the standard of complicity for a non-killer accomplice(the "Cavitt" rule)(at 255-56). Although the jury concluded Dominguez raped the victim, the Court deemed the instructional error prejudicial because the jury apparently had doubts that Dominguez, rather than Martinez, was the killer(id at 256-57).

The jury was "deprived not only of legal guidance, but of any solid evidentiary basis on which to determine what involvement, if any, defendant had in the killing"(at 257-58)...[T]he vagueness

of the evidence [which consisted solely of Dominguez' testimony] makes it impossible to say with confidence what happened on that night beyond the fact that [the decedent] was sexually penetrated by defendant, brutally assaulted, and ultimately killed. The sequence of these events, and the identity of the author of the latter two, is a matter for speculation and surmise"(at 258). As such, "the evidence failed entirely to establish articulable 'objective facts' establishing a causal connection between the rape and [the] killing"(at 259; see at 258["...any attempt to determine the relationship ---if any -- between the rape and the killing was inherently tinged with conjecture"]).

1. The Instant Case.

Assuming a robbery in this case (i.e., that Brown's property was taken by force or threat), all the evidence established is that the killing concurred in time and place with the robbery. That's it. California law requires more. There is no evidence the robbery and killing were causally related. There is no evidence Petitioner himself killed Brown. As far as the record shows, the killing could well have been committed by Harris in a manner unrelated to the robbery. If so, Harris was not "jointly engaged" in the robbery when he killed Brown and Petitioner is innocent of felony-murder. Evidence equally consistent with innocence cannot support an inference of guilt(CALJIC no. 2.01; Mikes-v-Borg 947 F.2nd 353,357-60-9th Cir.1991).

Indeed, the evidence suggests Harris shot Brown while Petitioner was some 20 yards away(RT-256-57) either before or after taking of property. Thus, the record does not demonstrate any robbery-

related acts by Petitioner or Harris somehow contributed to Brown's death. In other words, there was no "solid evidentiary basis on which to determine what involvement, if any, [Petitioner] had in the killing"(Dominguez at 257-58). The vagueness of the evidence makes it "impossible to say with confidence what happened" beyond that Brown was robbed and ultimately killed. The existence of a causal connection is thus "a matter for speculation and surmise"(id at 258).

There is no evidence, for example, the gun accidentally discharged while being pointed at Brown during the robbery. Indeed, there is no evidence the gun was used at all to facilitate a robbery or was present for that purpose. There is no evidence Brown resisted and had to be shot. There is no evidence he was shot before, rather than after, the property was taken. There is no evidence of robbery-related acts (such as beating or binding) which made Brown particularly vulnerable to being shot(compare Cavitt). There is no evidence the shooting was intended to aid an escape. In sum, there is no evidence Petitioner in any way contributed to Brown's death.

Analogous is "Mikes-v-Borg"(947 F.3rd 353-9th Cir.1991), wherein the Ninth Circuit concluded that Mikes' fingerprints on a murder weapon was insufficient to identify him as the killer: "While the Government need not exclude all inferences or reasonable hypotheses consistent with innocence...the record must contain sufficient probative facts from which a factfinder could reasonably infer a defendant's guilt...[thus] there must, at the very least, be sufficient evidence in the record to permit the factfinder to determine when the prints were impressed; otherwise, any conviction

would be based on pure speculation"(at 357). Because the weapon, a turnstyle post, had been publicly accessible before the killing, the evidence was "wholly insufficient to preclude the reasonable possibility that Mikes' fingerprints were placed on the posts [prior to the time of the crime]"(id at 357-60).

Similarly, there is a reasonable possibility, not foreclosed by the record, the killing in this case was not connected to the robbery. Senseless and purposeless killings happen all the time. As such, the evidence of causation was insufficient(Mitchell-v-Prunty 107 F.3rd 1337,1342-9th Cir.1997; id at 1341 & fn.8[evidence of guilt of murder insufficient absent evidence Mitchell's acts caused victim's death]).

B. Malice-Murder Theory.

There was insufficient evidence to support the prosecution's malice-murder theory as well(RT-1070-72; CALJIC no. 8.20). There is no evidence of premeditation, deliberation or intent to kill on Petitioner's part(see above at 30-31; People-v-Williams 16 C.4th 635,690-1997["[T]he manner in which the actual perpetrator committed the murders (execution style) did not itself reveal an intent to kill by defendant as an aider and abettor"]; People-v-Woods 8 C.A.4th 1570,1586-91-1992[noting that, depending on the evidence, defendant may be guilty of lesser degree of murder than perpetrator).

GROUND SIX-PETITIONER'S FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS WAS VIOLATED BY INSUFFICIENT EVIDENCE.

There was insufficient evidence the killing was committed to further or advance the robbery or the escape therefrom. The felony-murder special circumstance is thus invalid(Denard-v-Dir. Dept. of Corrections 967 F.S. 387,392-93-C.D.Cal.1997[applying "Jackson-v-Virginia" sufficiency analysis to felony murder special circumstance finding]).

As the jury was instructed, to impose the felony-murder special circumstance, which triggered Petitioner's sentence of life without parole, it had to find "the murder was committed in order to carry out or advance the commission of the robbery or to facilitate the escape therefrom or avoid detection. In other words, the special circumstance...is not established if the robbery was merely incidental to the commission of the murder"(CALJIC no. 8.80.1; RT-1077).

The special circumstance "involves proof of the intent of the accused. A murder is not committed during a robbery within the meaning of the [special circumstance] unless the accused has killed in cold-blood in order to advance an independent felonious purpose" (People-v-Kimble 44 C.3rd 480,500-01-1988; accord Williams-v-Calderon 52 F.3rd 1465,1476-9th Cir.1995; People-v-Thompson 27 C.3rd 303,321-25-1980[special circumstance inapplicable "when the whole record [was] viewed in a light most favorable to the verdict, it establish[ed] at most a suspicion that [defendant] had an intent to steal independent of his intent to kill"]; People-v-Green 27 C.3rd 1,59-62-1980[felony-murder special circumstance inapplicable when murder not intended to further robbery]).

As shown, the record is simply silent on the precise relationship, if any, between the killing and the robbery(above at 38-39). There clearly is no sufficient evidence the killer intended to further the robbery or escape therefrom. There is no evidence of what the killer intended by pulling the trigger. Put another way, the sparse record is equally consistent with an intent to kill or injure unrelated to the robbery. As the burden of proof is on the prosecution, this is insufficient to sustain the special circumstance(Mikes-v-Borg at 357-60; CALJIC no. 8.83[jury is "not permitted to find a special circumstance...to be true based on circumstantial evidence unless the proved circumstance is not only (1) consistent with the theory that a special circumstance is true, but (2) cannot be reconciled with any other rational conclusion...if the circumstantial evidence is susceptible to two reasonable interpretations, one of which points to the truth of a special circumstance and the other to its untruth, you must adopt the interpretation which points to its untruth,"]).

GROUND SEVEN-PETITIONER'S FEDERAL CONSTITUTIONAL RIGHT TO EFFECTIVE COUNSEL WAS VIOLATED.

Should the Court conclude the evidence was technically sufficient to prove felony-murder or the special circumstance, Counsel was nevertheless ineffective for failing to highlight the record inadequacies for the jury. Given the paucity of evidence as to precisely what occurred during the robbery and killing, the record clearly provided a substantial basis for arguing the prosecution had not met its burden of proof as to whether Petitioner killed, as to causation, or as to intent to kill and reckless indifference (see above at 28-42). Due Process requires proof of guilt beyond a reasonable doubt(in Re Winship 397 U.S. 358,364-1970).

An attorney is ineffective if (1) his performance falls below an objective standard of reasonableness, and (2) absent the error, there is a reasonable probability the jury would have acquitted (Strickland-v-Washington 466 U.S. 668,688-89,695-1984). Closing argument "should 'sharpen and clarify the issues for resolution by the trier of fact'[citation]"(Yarborough-v-Gentry 124 S.Ct. 1, 4-2003). Focusing "on a small number of key points may be more persuasive"(id at 5). "'A decision not to address an issue,... should be based on an analysis of the importance of that subject and the ability of the advocate and the opponent to explain persuasively the position to the fact-finder'[citation]"(id). "Gentry" focused on whether the omitted issues were "clearly more persuasive than those...discussed" such as to demonstrate ineffectiveness(id at 6).

The importance of proof beyond a reasonable doubt is beyond

question. If convinced the "Winship" standard had not been met, the jury was bound to acquit. The defense's ability to explain persuasively the prosecution burden, the offense elements, and how the evidence fell short was clear, particularly as such arguments would have been aided by Court instruction and the evidence.

An "elements" argument would clearly have been more persuasive than Counsel's attacks on witness credibility(RT-1006-31). The jury was free to resolve any credibility issues against Petitioner. However, Counsel should have argued that, even crediting prosecution testimony Petitioner was complicit in a robbery, it was nevertheless insufficient to prove murder and special circumstance liability. Neither Coleman's nor Savage's testimony demonstrated Petitioner killed, intended to kill, or that the killing was caused by, or intended to facilitate, robbery. The jury's ability to reject this argument was severely limited by the record itself(Lord-v-Wood 184 F.3rd 1083,1094-9th Cir.1999[noting Counsel's omissions therein "all the more questionable in light of the weaknesses in the prosecution case"]).

Instead, instant Counsel merely told jurors to "decide for yourself whether or not this is truly a felony-murder situation." Counsel then cited the reasonable doubt standard(RT-1012-13). Counsel failed to clarify exactly how the evidence fell short or to even clarify the felony-murder causation requirement. The felony-murder instruction given did not explain that a non-killer accomplice is not liable for a killing unrelated to the robbery even if the killing occurs during the robbery(RT-1071-73; People-v-Cavitt 33 C.4th 187,212-13-2004[noting that CALJIC no. 8.27 "simply fails to inform the jury of this principle"]). It is

on this precise point on which the evidence fell short(see above at 36-40).

Worse, Counsel implied it was irrelevant which robber shot Brown(RT-1016-17). To the contrary, the identity of the shooter was critical: a greater evidentiary showing was required, and lacking, for the non-shooter accomplice(see above at 28,30-35,36-40).

Analogously, "Young-v-Zant"(677 F.2nd 792-11th Cir.1982) found an attorney ineffective for failing to argue an "elements" defense to a murder charge when, "evidence that Young took [the victim's] life with malice aforethought was extremely thin"(at 798[noting Counsel also neglected "obvious defenses" to murder-robbery theory]). "Young" concluded the attorney's failures "indicates such a lack of preparation and exercise of skill that we do not hesistate to conclude his conduct fell far short of that required of counsel in a criminal trial"(at 799; Tejada-v-Dubois 142 F.3rd 18,24-25-1st Cir.1998[attorney ineffective when failure to competently argue defense theory "took the question away from the jury"]; U.S.-v-Swanson 943 F.2nd 1070-9th Cir.1991[same when attorney conceded guilt of offense during argument]).

If Counsel did not recognize the glaring weaknesses in the prosecution case, he was deficient. The evidence of causation, intent to kill, and reckless indifference, at best, was "extremely thin"(Strickland at 691[requiring Counsel decisions be made with full knowledge "of law and facts relevant to plausible options"]; Avila-v-Galaza 297 F.3rd 911,919-9th Cir.2002[Counsel deemed deficient when omission resulted from unfamiliarity with facts of case]). Counsel had a duty "to make the adversarial testing process work"(Strickland at 690). An indispensible component of

that process is the reasonable doubt standard and focused argument.

In the alternative, if Counsel thought an "elements" argument inconsistent with the defense arguments he made, he was still deficient. Counsel could have presented an elements argument in tandem with his misidentification arguments(Rios-v-Rocha 299 F.3rd 796,806 fn.18-9th Cir.2002[noting that choice of one defense over another would likely be deficient when "a trial strategy could be formulated in which the defenses would be complementary rather than conflicting"]).

Petitioner was prejudiced by Counsel's omissions. Prejudice in this context does not require proof the evidence was constitutionally insufficient(Lord-v-Wood at 1096[Counsel's error prejudicial despite fact jury could still have convicted in its absence]; Strickland at 693[proof of prejudice does not require showing "Counsel's conduct more likely than not altered outcome in the case"]). "[A] verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support"(Strickland at 696).

Counsel's error in this case "undermines confidence in the outcome"(Strickland at 693). The evidence is so thin on the elements as to call Petitioner's guilt into question. It is very likely a jury focused on that fact would have acquitted(Hart-v-Gomez 174 F.3rd 1067,1072-73-9th Cir.1999[Counsel's error prejudicial when evidence of guilt "far from overwhelming"]; Phillips-v-Woodford 267 F.3rd 966,982-83-9th Cir.2001[same when jury may have entertained doubt special circumstances elements proven]; Rios at 810 [same when "the state's case against Rios was at best a close

one"]; U.S.-v-Span 75 F.3rd 1383,1390-9th Cir.1996[defendant prejudiced when "highly likely" jury would have acquitted absent counsel's error]).

GROUND EIGHT-PETITIONER'S FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS AND EFFECTIVE COUNSEL WERE VIOLATED.

Due Process.

A pretrial identification procedure may violate Due Process if "unnecessarily suggestive" and conducive to mistaken identification. Due Process is violated if there is a substantial likelihood of irreparable misidentification(Manson-v-Brathwaite 432 U.S. 98,104-1977).

Witness Savage picked codefendant Harris out of a line-up(RT-780,783,219). In a separate, May 24, 2000 line-up containing Petitioner in position #3, Savage did not identify Petitioner. Savage instead indicated innocent "fillers" in positions #1 and #5 as possibly being the second suspect(RT-270,830; att.ex. (attached exhibit) A-5,2-3). On 6-14-2000, Savage recontacted investigators and informed them (1) he'd learned from a news broadcast Petitioner had been arrested in the case and (2) that Savage had known Petitioner years before the shooting. Savage asked Seargent Medieros if Petitioner had been in the line-up or in position #1(att.ex. A-5). Savage also told Medieros he might be able to recognize Petitioner in a courtroom(id).

At the preliminary hearing, on August 15, 2000, Savage identified Petitioner sitting at the defense table in jailclothes (1PHT[preliminary hearing transcript]-120). The foregoing circumstances were undeniably, unnecessarily, and unduly suggestive and tainted both the preliminary hearing identification and Savage's subsequent identification at trial(RT-254,255). The ad-

mission of each identification at trial violated Due Process. "An identification procedure is suggestive when it 'emphasizes the focus upon a single individual' thereby increasing the likelihood of misidentification"(U.S.-v-Montgomery 150 F.3rd 983,992-9th Cir.1998).

In this case, Petitioner was unfairly "emphasized as the focus of the investigation." It was unmistakably conveyed to Savage police believed Petitioner guilty. First, Savage saw Petitioner in the line-up (although he did not identify Petitioner)(Marsden-v-Moore 847 F.2nd 1536,1545-46-11th Cir.1988[Photo identification procedure suggestive even though witness did not identify Marsden in photo because procedure gave witness "a frame of reference for her later in-court identification of Marsden"]). Savage then received information Petitioner was arrested in connection with the case. Savage then saw Petitioner together with Harris (whom Savage had already identified-RT-219) in court before Savage testified (2PHT-55-56). Finally, Petitioner was brought into court clad in jail clothes clearly marking him as a defendant and placed at the defense table. It was then that Savage, unsuprisingly, identified Petitioner(1PHT-120,119). As such, the identification procedure was unduly suggestive(U.S.-v-Montgomery at 992[Procedure suggestive when witness shown photos of Montgomery and allowed to view him in courtroom before identification on stand]; Thigpen-v-Cory 804 F.2nd 893,895-96-6th Cir.1986[Defendant's appearance in line-up and subsequent court proceedings related to investigation, including once with a man the witness had already identified, unduly suggestive]).

Several factors are relevant to determining whether the above procedures gave rise to a substantial likelihood of misidentifica-

tion. "These include the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of his prior description of the criminal, the level of certainty demonstrated at the confrontation, and the time between the crime and the confrontation. Against these factors is to be weighed the corrupting effect of the suggestive identification itself"(Manson-v-Brathwaite at 144; U.S.-v-Montgomery at 993).

These factors apply in determining the admissibility of both the pretrial identification and the in-court identification(Neil -v-Biggers 409 U.S. 188,198-1972; Tomlin-v-Myers 30 F.3rd 1235, 1241-9th Cir.1994[Finding testimony about previous illegal lineup inadmissible]). The bottom line is whether the identification resulted from the suggestiveness or from the witness' observation of the crime(Tomlin at 1240-41[citation][Government must prove "'by clear and convincing evidence that the in court identification was based upon observations of the suspect other than the lineup identification'"]).

In this case, Savage saw the two suspects twice, once outside his building (from a distance of 10-15 feet)(RT-251-57,275) and once after the shooting near Brown's car (from an estimated distance of 50 yards)(RT-282,831). The "Manson" analysis should be made with reference to the first, up close, encounter as it is unlikely Savage could see any faces or facial details from 50 yards away. Although not clear from the record, but as Savage's testimony and statements suggest(RT-250-55,277; att.ex. B at 3), he most likely identified the men near Brown's car solely by their clothes and skintone, which he had noted while he was close to

them(att.ex. B at 2-3,4-5,3(part 2)). One was light-skinned, the other darker(RT-277-78,283). One (identified as Harris) had on light pants, the second had dark pants(RT-276,288). Indeed, given that the burden is on the prosecution to prove the identification independent of the suggestiveness(Tomlin-v-Myers at 1240), it should be presumed absent evidence to the contrary that Savage could not make out the suspects' faces from 50 yards away.

A. Opportunity to View.

Savage observed the two men outside his home for just 1-2 minutes(1PHT-89). During that time, his attention was divided between them(RT-250-54). Savage saw the individual identified as Petitioner full face for only about five seconds and from 14-15 feet away(RT-287; 1PHT-88). Moreover, Savage did not note any distinguishing features of the suspect in profile(1PHT-100,103).

B. Degree of Attention.

Savage testified he was more concerned with his safety than with noting details regarding the suspects(RT-291; 1PHT-89,99-101, 103-04,110,122). His attention was more acute as to the suspect identified as Harris than as to the suspect identified as Petitioner. This is so because the former was standing (and light-skinned) while the latter sat(RT-253,260,267,277,274-75,283; 1PHT-96-97). Accordingly, Savage identified Harris during a line-up(RT-269-70; Raheem -v-Kelly 257 F.2nd 122,142-2nd Cir.2001, see at 138[identification of defendant as shooter unreliable when witness paid closer attention to shooter's companion]).

C. Accuracy of Description.

Any accuracy in Savage's description is undercut by its generality. He described the sitting suspect as a black male, dark, 25 and 175 pounds(att.ex. D at 4; att.ex. B at 6). The description could apply to any number of people. He gave only one detail pertaining to the suspect's face: "bubbly eyes"(RT-254,289). "Accuracy also refers to how particularly a description matches a suspect" (Thigpen-v-Cory 804 F.2nd 893,896-97-6th Cir.1986[Court's emphasis] [Identification unreliable when description accurate, but general]; Marsden-v-Moore 847 F.2nd 1536,1545-46-11th Cir.1988[Same when description of suspect "very general"]; Rodriguez-v-Young 906 F.2nd 1153,1163-7th Cir.1990[Finding general description weighed against reliability when "It would fit dozens of men...[and] offers no details as to the facial features or other more distinguishing characteristics than age, build, and complexion..."]).

Also, Savage's ability to accurately gauge height was impaired because the suspect was sitting the entire time Savage was near him (RT-267,274-75,283; att.ex. B at 2).

D. Time Between Crime and Confrontation.

Savage later testified he had recognized Petitioner at the line-up(RT-294,270; 1PHT-120) which was held just nine days after the crime(RT-291-92). However, Savage did not identify Petitioner on that day(RT-785-86). Instead, he pointed out two line-up fillers as possibly being the suspect(RT-830,785-86).

Notwithstanding his excuse for not then identifying Petitioner (that he was angry with investigators-att.ex. C at 3; see 1PHT -120), it's clear Savage simply did not then recognize Petitioner

either as a suspect or at all. Supporting this conclusion is the fact Savage had to ask Seargent Medieros, after the line-up, if Petitioner was in that line-up(RT-786-87; att.ex. A-5). He guessed, wrongly, that Petitioner was in position #1(id; RT-830). Moreover, Savage's statement at the time that he might be able to recognize Petitioner in court(att.ex. A-5), shows Savage had not already recognized him in the line-up. It is obvious that the news report that Petitioner had been arrested made Savage realize, after the fact, Petitioner might have been in the line-up.

As such, Savage did not identify Petitioner until three months after the crime at the preliminary hearing under suggestive circumstances(1PHT-120). By then, Savage's memory could have faded and was subject to being corrupted(Stovall-v-Denno 388 U.S. 293,301-1967[Noting that a delay of months would be "a seriously negative factor" in determing the reliability of an identification]; U.S.-v-Rodgers 126 F.3rd 655,657-11th Cir.1997[Identification months after the crime raised serious concerns about accuracy]; People-v-McDonald 37 C.3rd 351,361-1984[Wherein an expert on eyewitness identification established that memory is "a selective and a constructive process, in which the elements fade and are lost while new elements -- subsequent suggestions or information -- are unconsciously interwoven into the overall recollection until the subject cannot distinguish one from the other"]).

E. Certainty of Identification.

The credibility of Savage's professed certainty in his identification(1PHT-138) is undercut by the prosecutor's leading question(id), Savage's inability to previously identify Petitioner, and

his limited view of the suspect. Further, any true certainty likely resulted from the aforementioned suggestive circumstances(Raheem-v-Kelly at 139[Identification unreliable when certainty "engendered by the suggestive element itself"]; Rodriguez-v-Peters 906 F.2nd at 1163[Noting that "the most certain witnesses are not invariably the most reliable ones"]; People-v-McDonald at 362[Wherein expert testified that certainty does not equal accuracy with identifications]; see also Cossel-v-Miller 229 F.3rd 649,656-7th Cir.2000[Identification unreliable when witness had failed to identify suspect twice before]; Thigpen-v-Cory 804 F.2nd at 897[Same when witness failed to identify defendant at line-up]).

F. Additional Factors.

There is an additional factor tipping the scales toward unreliability in this case: Savage apparently knew Petitioner from years before Savage witnessed the crime(RT-260,785-86,787). This brought into play the phenomenon of "unconscious transfer" whereby "a witness confuses a person seen in one situation with a different person seen in another"(People-v-McDonald 37 C.3rd at 374 fn.20). Such has been recognized by experts as possibly causing misidentification(id). Quite simply, Savage could have confused his memories of Petitioner in a non-criminal context with his memories of the suspect. Such confusion would have been helped along by Savage's knowledge Petitioner was arrested and being tried for the murder. As noted, Savage did not identify Petitioner until after he saw him in custody with Harris. "The witness' recollection of the [suspect] can be distorted easily by the circumstances or by later actions of the police"(Manson-v-Brathwaite at 112).

In light of the above, admission of the identifications violated Due Process.

Ineffective Counsel.

Counsel was clearly ineffective for not moving to suppress the pretrial identification and to preclude or suppress Savage's trial identification. The above "Manson" factors could have been developed at a suppression hearing. At the least, Counsel should have moved at trial to strike the identifications after the relevant testimony was given(Rodriguez-v-Peters at 1161 fn.14[Concluding Counsel should have made "colorable" motion to suppress identification at trial after relevant testimony]).

"[C]ounsel's failure to file a motion to suppress evidence can provide the basis for a claim of ineffectiveness"(Van Tran-v-Lindsay 212 F.3rd 1143,1156-9th Cir.2000 citing Kimmelman-v-Morrison 477 U.S. 365-1986). "When faced with a client who has been identified in an illegal [or suggestive] line-up, most defense attorneys would challenge the admission of any evidence related to it. After all, a defendant 'arguably has everything to gain and nothing to lose in filing a motion to suppress'[citation], especially one involving an identification by the sole witness to the crime"(Tomlin -v-Myers 30 F.3rd at 1238). "Tomlin" concluded Counsel therein was deficient for failing to bring a motion suppress a tainted in-court identification: "The failure to bring to the Court's attention a major Constitutional error...is not the product of reasonable professional judgment"(at 1239; Rodriguez-v-Peters at 1160-61[Same when "defense could not have been compromised by a motion to suppress" and identification was by "only...witness

naming the defendant as the murderer"]).

Similarly, instant Counsel had nothing to lose by filing a motion which could have resulted in suppression of the only non-accomplice testimony linking Petitioner to the offense. Savage's claim to have known Petitioner from years before did not justify foregoing a suppression motion.

"Rodriguez-v-Peters" concluded that Counsel therein should have moved to suppress despite the witness' prior acquaintance with Rodriguez(at 1160). The Court explained: "The issue was not whether she recognized [Rodriguez] generally but whether she recognized him as the killer...a motion to suppress...would have been directed...to suppressing any identification of Rodriguez as [a perpetrator]"(id). Similarly, the issue in this case was whether Savage saw Petitioner at the crime scene. As noted, rather than insuring reliability, Savage's prior acquaintance with Petitioner may have undermined the identifications(above at 54). As such, Counsel should have moved for suppression.

That failure was prejudicial because Counsel "would have prevailed on the suppression motion, and...there is a reasonable probability that the successful motion would have affected the outcome"(Van Tran at 1156 citing Kimmelman at 375; Rodriguez-v-Peters at 1161["Strickland" prejudice dependent on admissibility of identification]).

In this case, acquittal was more than reasonably probable absent Savage's identifications. As noted, the only other evidence linking Petitioner to the crime was the statements and testimony of Coleman(above at 2-5,9,16-17). However, as Coleman was an

accomplice, her testimony alone could not support a conviction(RT-1068-69; Penal Code §1111). Thus, the absence of Savage's identifications, which provided critical §1111 corroboration, would have required acquittal.

GROUND NINE-TRIAL COUNSEL WAS INEFFECTIVE IN VIOLATION OF THE SIXTH AMENDMENT.

Savage testified he saw Petitioner and Harris outside Savage's window and around Brown's car when Brown was shot(RT-250-57). Savage also testified to his preliminary hearing identification of Petitioner(RT-254-55). Savage did not identify Petitioner in a line-up but claimed at trial to have recognized Petitioner in that line-up(RT-270,294). Savage's testimony was critical. He was the only non-accomplice witness to implicate Petitioner(Penal Code §1111). Trial Counsel was ineffective for not impeaching Savage's testimony with adequate cross-examination.

Savage was impeached to some extent. It came out that Savage had picked two innocent line-up "fillers" rather than Petitioner as possibly being suspect two (Savage had already identified Harris)(RT-292-94,785-86). Nor did Savage identify Petitioner in a subsequent police interview(RT-833; att.ex. B). Savage was also generally impeached with prior inconsistent statements involving how dark it was that night(RT-262), what the suspects were wearing(RT-268,275-76,288), his degree of attention(RT-278-79), whether suspect two had facial hair(RT-289), and if Savage had noticed any distinct facial features(RT-289-90).

However, Counsel failed to impeach Savage on points which went to the heart of whether Savage's identifications were to be believed.

(1) After the line-up, Savage learned from a newscast that Petitioner had been arrested for Brown's murder. Savage then

called Seargent Medieros to ask if Petitioner had been in the line-up(RT-786-87; att.ex. A-5). Savage also told Medieros he might recognize Petitioner if he saw Petitioner in court(att.ex. A-5).

During cross-examination, Savage claimed not to remember the call or his questions to Medieros(RT-294-95). In accord with instructions(RT-1053-54), the jury could not consider Counsel's questions on the matter as evidence. Having been stonewalled by Savage, Counsel was ineffective for failing to bring the evidence in through Medieros and by introducing the written report of the conversation(att.ex. A). Had Counsel done so, it would have bolstered the critical inference Savage did not identify Petitioner at the line-up because Savage simply did not recognize him as a perpetrator. In other words, that Savage had to ask if Petitioner were in the line-up shows he hadn't already recognized Petitioner therein. Similarly, if Savage had recognized Petitioner, there would have been no doubt he could do so in court. However, Savage could only state he "might" be able to identify Petitioner in court(att.ex. A-).

Counsel did question Medieros somewhat on the matter. Medieros responded that Savage stated during the call that: "[H]e remembered Mr. Lockhart [Petitioner], and Mr. Lockhart prior and he was trying to ask me if a certain person in the line-up was Mr. Lockhart"(RT-786-87). Medieros' testimony thus established that Savage had to ask if Petitioner was in the line-up. However, the testimony did not reveal that Savage had learned from a source other than the line-up (i.e. the news) that Petitioner was in custody. Nor did Medieros testify Savage was uncertain as to his ability to identify Petitioner. Medieros' incomplete test-

imony thus left the misleading impression either that (1) Savage had realized, after the fact and based on the line-up alone, that Petitioner was the perpetrator or (2) that Savage had recognized Petitioner from the beginning but simply kept silent.

(2) Savage's "identification" at the preliminary hearing very likely resulted from suggestion. Counsel should have cross-examined Savage or otherwise elicited the fact (1) Petitioner was in obvious jail clothes at the defense table at the preliminary hearing and (2) Savage had seen Petitioner in court with Harris, whom Savage had already identified(1PHT-119-20; 2PHT-55-56). This would have provided the inference Savage's preliminary hearing identification resulted, not from his observations of the crime, but from his knowledge authorities believed Petitioner guilty, Petitioner's obvious status as a defendant, and Petitioner's association with someone Savage already believed guilty.

Supreme Court and Circuit authority recognize circumstances such as those in this case can cause mistaken identification(Manson -v-Brathwaite, dissent at 120 fn.2 & 133-34[Noting that it is highly suggestive when a witness knows the defendant "is believed to be guilty by the police"]; Thigpen-v-Cory 804 F.2nd at 895-96 [Defendant's appearance in line-up and subsequent court proceedings related to investigation, including once with a man the witness had already identified, rendered witness' in-court identification of Thigpen unreliable]; U.S.-v-Montgomery 150 F.3rd at 992[Procedure suggestive when witness shown photos of Montgomery and allowed to view him in courtroom before identification on stand]).

The proposition Savage failed to recognize Petitioner in this the line-up would have undermined Savage's "identifications" at the preliminary hearing and trial. The jury would no doubt have wondered how Savage did not recognize Petitioner just nine days after the crime (at the line-up)(RT-785), but could finger him three months later at the preliminary hearing and three years later at trial(see Cossel-v-Miller 229 F.3rd at 656[Identification unreliable when witness had failed to identify suspect twice before]; Thigpen-v-Cory at 897[Same when witness failed to identify defendant at line-up]). Savage's failure to identify at the line-up would, in turn, have bolstered the inference the preliminary hearing identification was solely the result of suggestion.

Thus, proper cross-examination would have encouraged the inference Savage had consistently failed to identify Petitioner until seeing him under highly suggestive circumstances. This conclusion, along with evidence Savage saw suspect two "full face" for just seconds from 14-15 feet away(RT-287), could have led the jury to reject Savage's identification.

Counsel was thus deficient. In "Berryman-v-Morton"(100 F.3rd 1089-3rd Cir.1996), Counsel failed to impeach uncorroborated eyewitness testimony with prior inconsistent statements which called into serious question the identification of Berryman. The Third Circuit found this deficient: "Petitioner's counsel had in his hands material for a devastating cross-examination of [the witness] on the critical issue in the case"(at 1098). It was "wholly unreasonable" for counsel not to impeach evidence which "cuts directly to the heart of the only evidence against Berryman"(at 1099).

In "Nixon-v-Newsome"(888 F.2nd 112-11th Cir.1989), the defendant was convicted based solely on the identification testimony of the victim's wife. Nixon's attorney failed to impeach with her prior testimony another man was the shooter and that Nixon had no gun. The Eighth Circuit stated: "We have no difficulty concluding that the attorney's actions were not within the wide range of professional competence...The attorney's failure...sacrificed an opportunity to to weaken the star witness' inculpatory testimony"(at 114-16).

In "Moffet-v-Kolb"(930 F.2nd 1156-7th Cir.1991), Moffet's defense theory was that his brother, rather than Moffet, committed the charged attempted murder. The Seventh Circuit found counsel ineffective for not introducing a prosecution witness' prior statements indicating the brother had indeed shot the victim(at 1161-62 [Noting the "statements were critical evidence for Moffet's counsel's defense theory"]).

Under "Berryman" and "Nixon," Savage was a star witness in this case, the sole witness identifying Petitioner and providing corroboration under §1111. Counsel had the means to devastate his testimony but failed to do so. Nor was his failure a tactical decision. The omitted cross-examination dovetailed perfectly with Counsel's contention that Savage failed to recognize Petitioner at the line-up and that his identifications should not be believed(RT-1028-29; Hart-v-Gomez 174 F.3rd 1067,1071-9th Cir.1999[Finding it "inconcievable" omission contrary to Counsel's chosen line of defense was strategic]; U.S.-v-Span 184 F.3rd 1083,1095-9th Cir.1999[Counsel deficient for not introducing evidence which "dovetailed with their defense"]; Lord-v-Wood 75 F.3rd 1383,1389-90-9th Cir.1996[Counsel's failure to request instruction which would bolster defense not

strategic]).

As demonstrated(above at 56-57), there is more than a reasonable possibility that rejection or absence of Savage's testimony would have resulted in acquittal(Berryman at 1102[Failure to impeach prejudicial when "Berryman's guilt rested entirely on the accuracy of [the unimpeached] identification"]; Nixon at 115[Same when other evidence against Nixon "far from overwhelming"]; Moffet at 1161-62 [Same when strongest evidence against Moffet was inconclusive]).

ATTACHED RELEVANT TRANSCRIPTS

39-41,46-48 - OPENING ARGUMENTS REGARDING HARRIS STATEMENT

72-73 - CORONER TESTIMONY

125-59,170-241,301-14,373-75,852 - TESTIMONY AND STATEMENTS OF PAULINE COLEMAN

248-99 - TESTIMONY OF ENZORE SAVAGE

281,448-56,503,529-32,571-74 - THREAT EVIDENCE

562-63,690-95,702,711-12 - BALLISTIC EVIDENCE

627-33 - PAWN RECORDS TESTIMONY

773-74 - ADMISSION OF HARRIS STATEMENT

780-90,829-33 - TESTIMONY RELATED TO SAVAGE AND LINE-UP

819-20 - TESTIMONY ABOUT RESTRAINING ORDER

400-04,874-75,1107 - COLEMAN'S PLEA AGREEMENT

956-58,971,991-95,1000-04,1033-36,1040 - CLOSING ARGUMENTS (PROSECUTOR AND COUNSEL FOR HARRIS)

1006-031 - CLOSING ARGUMENT (COUNSEL FOR PETITIONER)

1053-54,1056-57,1062-63,1068-69,1070-77 - PERTINENT JURY INSTRUCTIONS

1110 - TRIAL COURT STATEMENT

1PHT-85-141 - SAVAGE PRELIMINARY HEARING TESTIMONY

2PHT-32-58 - SAVAGE PRELIMINARY HEARING TESTIMONY

EXHIBIT COVER PAGE

A
EXHIBIT

Description of this Exhibit: LINE- UP REPORT

Number of pages to this Exhibit: 5 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☒ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

OPD
OAKLAND POLICE DEPARTMENT
455 - 7th Street
Oakland, CA 94607

ADDITIONAL INFORMATION REPORT

RD # 00-44120

CRIME	SUPPLEMENTAL	INCIDENT #		VICTIM LAST, First, Mid.
187 PC	X		V1	Brown Gerald

SUSPECT LAST, First Mid.	INCIDENT LOCATION	DATE OF THIS REPORT	ORIGINAL DATE REPORTED
LOCKHART. Eric	1 to 555 Bancroft	24 MAY 00	15 MAY 00

PROPERTY (and/or NARRATIVE)

ITEM #	QNTY.	ITEM TYPE, BRAND, MODEL #, SIZE, COLOR, MARKS, ETC	SERIAL #	VALUE

Sunny - On 24 MAY 00, SGT. L. Cruz & I conducted a physical lineup, with Susp LOCKHART, in regards to this murder.

Abt 1905 hrs, I reviewed the physical lineup card with witness Savage, who indicated he understood the instructions & signed the card.

Abt 1910 hrs, I observed the lineup participants, which Susp LOCKHART picked. I noted Mr. Johnny Powell was only 5'6" & weighted abt 195 lbs. I removed Powell from the line, due to his physical not being similar to LOCKHART. LOCKHART then picked Arthur Sims as the replacement for Powell.

I allowed LOCKHART to set the lineup order, which he set as the following:

1. Arthur Sims
2. Edward Mitchell
3. LOCKHART, Eric
4. Darnell Young
5. Mandy Coleman
6. Marquis Maaton

The lineup began abt 1920 hrs & was videotaped by SGT. Cruz. The lineup was conducted in the normal manner, with each participant stepping to the front & [illegible] individually, making four (4) quarter

REPORTED BY	SERIAL #	WATCH	DISTRICT	SUPERVISOR	SERIAL #	PAGE
SGT Medeiros	7774C	CID		LTD Berlin		PAGE 1 OF 3

TF-3044 (4/01/84)

ORI 001

OPD ADDITIONAL INFORMATION REPORT

OAKLAND POLICE DEPARTMENT
455 - 7th Street
Oakland, CA 94607

RD # 00-44120

CRIME	SUPPLEMENTAL	INCIDENT #		VICTIM LAST, First, Mid.
187 PC			V1	Brown Gerald

SUSPECT LAST, First Mid.	INCIDENT LOCATION	DATE OF THIS REPORT	ORIGINAL DATE REPORTED
LOCKHART Eric	IFO 5555 Bancroft	24 May 00	15 May 00

PROPERTY (and/or NARRATIVE)

ITEM # QNTY. ITEM TYPE, BRAND, MODEL #, SIZE, COLOR, MARKS, ETC SERIAL # VALUE

(cont) turns walking to the N/wall, turning & walking to the South wall, returning to the center microphone, then returning to the line. None of the participants were asked to speak, nor wear any particular clothing. As a group, I had the line make a series of turns. At witness Savage's request, I had the line as a group turn towards the N/wall, for a short period of time.

The lineup ended about 1929 hrs, & I asked Savage to mark his lineup card, if applicable. Savage then placed "?" on fillers number #1, #5.

REPORTED BY	SERIAL #	WATCH	DISTRICT	SUPERVISOR	SERIAL #	PAGE
SGT. Medeiros	7776		C10	LT Berlin		PAGE 2 OF 2

TF-3044 (4NOV94)

DATE AND TIME OF SHOW-UP: 24 MAY 00 · 1700 | R.D. NUMBER: 00-44120

IDENTIFICATION SHOW-UP RECO
OAKLAND POLICE DEPARTME

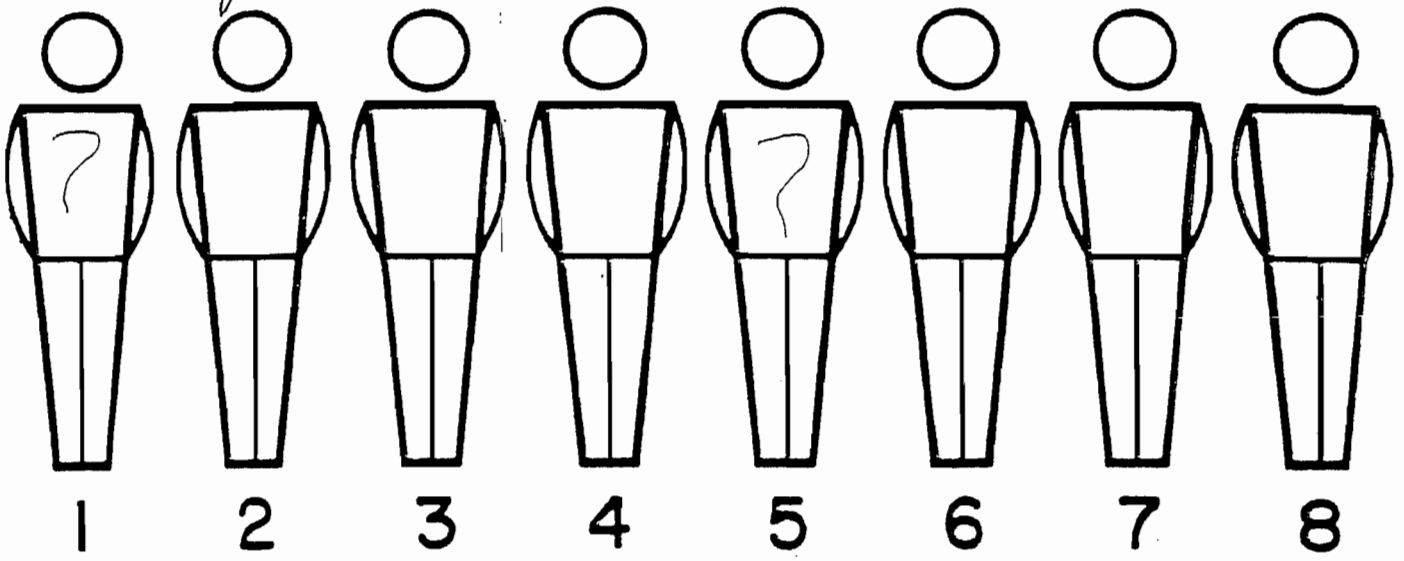
TF-880 (1/80)

Show-up Position	SUBJECTS IN SHOW-UP (INDICATE SUSPECTS BY CHECK MARKS IN MARGIN)	SEX	RACE	AGE	HEIGHT	WEIGHT	ARREST NUMBER	O.P.D. NUMBE
5	COLEMAN, MANDY	M	B	30	601	180	12809	A51646
2	MITCHELL, EDWARD	M	B	46	511	150	12764	AD8747
~~4~~	~~FOWELL, SCOTT~~	~~M~~	~~B~~	~~44~~	506	168	12547	A1H898
4	YOUNG, DARNELL	M	B	21	602	170	12777	1317044
6	MOUTON, MARQUIS	M	B	20	508	145	12839	B5K56
3	LOCKHART, ERIC - 18	M	B	38	601	165	12760	AQC136
1	SIMS, ANTHONY	M	B	19	60	160	12871	BA8816

OFFICER REQUESTING SHOW-UP: SGT. B. Medeiros | SER. NO. 7774
OFFICER CONDUCTING SHOW-UP: T Pereira | SER. NO. 7774
JAILER PRESENT AT SHOW-UP: Furtado | SEI 4118
INVESTIGATING OFFICERS PRESENT AT SHOW-UP – NAMES AND DIVISIONS: SGT CRUZ 7369C
PHOTO OFFICER: CRUZ | SEI
ATTORNEY PRESENT AT SHOW-UP: None
REMARKS:

RD NO: 00-44120 | DATE: 24 MAY 00
WITNESS'S NAME: Savage, Enzor

LINEUP CARD
OAKLAND POLICE DEPARTMENT
TF-657 (5/83)



A. IF THE SUSPECT IS PRESENT, PLACE AN (X) ON THE CHEST OF THE FIGURE ABOVE THAT IS MARKED WITH THE SAME NUMBER AS THE SUSPECT.

B. IF THE SUSPECT IS NOT PRESENT, DO NOT MARK ANY FIGURE.

C. IF YOU BELIEVE A PERSON WHO IS PRESENT IS THE SUSPECT, BUT YOU ARE NOT SURE, PLACE A QUESTION MARK (?) ON THE CHEST OF THE FIGURE THAT IS MARKED WITH THE SAME NUMBER AS THAT PERSON.

D. PLEASE DO NOT MARK YOUR CARD UNTIL THE LINEUP HAS BEEN COMPLETED.

INSTRUCTIONS

YOU ARE ABOUT TO SEE AND PARTICIPATE IN A LINEUP CONDUCTED BY THE OAKLAND POLICE DEPARTMENT. THE FOLLOWING PROCEDURES WILL BE USED:

1. THE LINEUP WILL BE CONDUCTED BY SGT B. Mathews

2. THE PLACE OF THIS LINEUP IS Oakland Police Dept. Line Up Room

3. DO NOT DISCUSS YOUR CASE WITH OTHER WITNESSES, OR ANYONE IN THE LINEUP ROOM.

4. DO NOT SIT NEXT TO SOMEONE WHO IS A WITNESS IN YOUR CASE.

5. THE INDIVIDUALS YOU WILL BE SHOWN WILL NOT BE NAMED; THEY WILL BE ASSIGNED NUMBERS. IF THE SUSPECT OR SUSPECTS IN YOUR CASE ARE IN THE LINE, REMEMBER THEIR NUMBERS.

6. DO NOT CALL OUT A PERSON'S NUMBER, OR DO OR SAY ANYTHING THAT MIGHT SHOW YOU HAVE IDENTIFIED SOMEONE IN THE LINE.

7. IF YOU WISH TO HAVE A CERTAIN PERSON IN THE LINE SPEAK, WEAR A HAT, WALK RAPIDLY, ETC., MAKE THIS REQUEST TO THE INVESTIGATOR CONDUCTING THE LINEUP, AND ALL MEMBERS IN THE LINEUP WILL BE ASKED TO DO THE SAME THING. NO MEMBER IN THE LINE WILL BE SINGLED OUT TO SPEAK OR PERFORM.

8. IF YOU IDENTIFY ANYONE, PLEASE TELL THE INVESTIGATOR IF THE PERSON'S APPEARANCE HAS CHANGED IN ANY WAY. TELL THE INVESTIGATOR AFTER THE LINEUP IS COMPLETED.

9. DO YOU UNDERSTAND THE INSTRUCTIONS? ☒ YES ☐ NO

WITNESS'S SIGNATURE

- PLEASE REVIEW THE INFORMATION ON THE REVERSE SIDE -

OPD ADDITIONAL INFORMATION REPORT

OAKLAND POLICE DEPARTMENT
455 7th Street
Oakland, CA 94607

FILE # 00-44120

CRIME	SUPPLEMENTAL	INCIDENT #		VICTIM LAST, First, Mid.	
187PC	X		V1	Brown, Gerald	

SUSPECT LAST, First, Mid.	INCIDENT LOCATION	DATE OF THIS REPORT	ORIGINAL DATE REPORTED
Lockhart, Harris Coleman	IFO 555 Bancroft Ave	20 JUN 00	15 Mar 00

PROPERTY (and/or NARRATIVE)

ITEM # QNTY. ITEM TYPE, BRAND, MODEL #, SIZE, COLOR, MARKS, ETC SERIAL # VALUE

Summary: About 1420 hrs, 14 JUN 00, I received a phone call from witness E. Savage, who told me the following. Savage said he had prior contacts with susp LOCKHART (several years ago), and knew his brother Michael LOCKHART. Savage said he learned Eric LOCKHART was arrested & charged via the news. Savage then asked me if LOCKHART was "number #1" in the physical lineup. I didn't respond to this question. Savage then said he might recognize LOCKHART'S face, as knowing him from the past, in a courtroom.

I phoned DDA S. Jackson w/ the above info, leaving a message concerning Savage's comments.

On 20 JUN 00, at 1300 hrs, I spoke with Lansing Lee, who advised ballistic work has not yet been conducted on this case.

On 20 JUN 00 about 1330 hrs, I spoke with Stuart of Criminalistics, who advised the fingerprint work on this case has yet to be completed.

REPORTED BY	SERIAL #	WATCH	DISTRICT	SUPERVISOR	SERIAL #	
SGT Medeiros	7772	OD		LT Berlin		PAGE 1 OF 1

TF-3044 (4NOV94)

ORI 00109

EXHIBIT COVER PAGE

B

EXHIBIT

Description of this Exhibit: TAPE- TRANSSCRIPT

Number of pages to this Exhibit: 15 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☒ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

People vs. Eric Lockhart
Interview with Enzor Savage
5/22/2000

ME: Yes, good evening, today is the 22nd of May, the year 2000. I'm Sergeant Brian Medeiros of the Oakland Police Department. I'm in CID room 203 with my partner, Sergeant Lou Cruz and Mr. Enzor Savage. Mr. Savage for the tape, would you please spell your last name and give us your birth date please?

SA: S A V A G E 7/29/54

ME: Okay, just for documentation, I don't think I stated the time, we have 7:51 p.m., 1951 hours. Now a little while ago, Mr. Savage, uh, we had you attend a physical lineup, correct?

SA: Correct

ME: And we reviewed the lineup cards together front and back and you signed that you understood the instructions. You ended up putting an X on a number on the lineup card, correct?

SA: Yeah

ME: And you put an X onto what number?

SA: 3

ME: Okay. Who do you believe number 3 to be.

SA: The same person who I saw on the side of the building, same person who if I'm not mistaken who was crossing the street walking away from the Continental.

ME: Okay, now is this going back to this last, I guess it would be late Sunday night, Monday

morning?

SA: Yeah, yeah it was Sunday, it was Sunday night (inaudible)

ME: Now you thought, now you said what about this guy being outside the apartment? Outside your place?

SA: I saw him he was the one who stood out more than anybody because I could, well, (Inaudible) I first saw that head, I knew it was him.

ME: Okay, where did you first see Number 3.

SA: On the side of my building.

ME: Okay and the address there, Sir?

SA: 5515 Hilton Street.

ME: Did you see Number 3 again that night?

SA: I saw him across the street.

ME: Okay and do you know what the address is across the street?

SA: Shoot, 56, 55, I never paid that address any attention?

ME: Would that be the 5500 block of Bancroft

SA: Yeah

ME: In regards to that homicide investigation my partner and I met you on.

SA: Yes.

ME: Uh, exactly where did you see number 3.

SA: I saw him standing by the Continental. It was standing there, he wouldn't leave, he just stood there and I really started recognizing when he walked away and he got past the Continental and he got towards the little burgundy little Blazer or whatever they call it,

that's when I put it together, that's the same guy who was on the side of the building but he had on white pants at the time.

ME: And the Continental he was next to, what color was that?

SA: Continental? It looked like it could be eggshell, yellow white.

ME: And, you, you ended up going over there, correct?

SA: Yes, I did.

ME: Was there, did you find out was there every anybody in that white Continental (inaudible)

SA: (Inaudible)

ME: And who was that in the Continental?

SA: Cross the street neighbor.

ME: And that was the victim of the crime?

SA: Yes.

ME: Okay, uh, and not too long ago, I believe I saw your I believe it was four photos of the vehicle, a couple of photos of the exterior and I think one of the interior. Is that correct?

SA: Yeah, (Inaudible)

ME: Okay. Did that vehicle look familiar.

SA: It looked like the vehicle.

ME: And what vehicle would that be Sir?

SA: It's a Cadillac Coupe de Ville. And, uh, the only thing I knew that really stood out about that car was the arm rest. Most Cadillacs come with two arm rests. That one had the big fat one. I remember looking at that car, I remember gazing in and looking at the arm rest.

ME: How many arm rests.

SA: Its only one big fat one, that's how I remember that car.

ME: Just like the photos you saw tonight?

SA: Just like the one in the photo.

ME: And that Cadillac you're talking about, does that vehicle, where do you think you've seen that vehicle before?

SA: Right in front of my house, apartment building rather.

ME: On Hilton Street.

SA: On Hilton Street.

ME: And, this is in regards to the past Sunday night, Monday morning, the 15th of May of the year 2000.

SA: Yes.

ME: Sergeant Cruz?

CR: Just a couple of questions.

Now, the man that you identified tonight, Mr. Savage, what color pants was ne wearing that night.

SA: If I'm not mistaken they were white.

CR: Okay, the other man that you saw, what color pants was he wearing?

SA: I couldn't really tell what color, what he was wearing. They both had on leather coats. He broke and ran, all I remember maybe really distinguishing him, is I looked at the guy and as he got coming closer to me, going down Bancroft, it rang like through my head, I remember looking in my window in the Cadillac when he was pulling off and I remember the guy had on a leather coat and light pants and I remember that. (Inaudible) but I

remember he had on white pants. Jeans

CR: Did you see the driver of the Cadillac?

SA: No, I didn't, I mean you know, the guy that I just picked out is the one that had on the white jeans and the leather coat.

CR: Right.

SA: When I looked through my window, I could remember seeing white pants through the window looking down when they were pulling off, but I didn't want to turn my lights on or nothing and let them see me looking at them, you never know what's going on. So I just glazed through a crack in my window and I watched them pull off (inaudible)

CR: Okay, I don't have any other questions.

ME: Okay, when you saw the white pants in the vehicle, what seat was that?

SA: It was on the passenger seat.

ME: Passenger side.

SA: It was on the passenger side. As a matter of fact, when the gun, after all that happened, I heard that car, the same sound Cadillac had started up and the other gun was driving because the other guy was in the street going come on, and when he got halfway, I heard the car start up. He didn't even get in the car yet by the time the car started.

CR: The guy with the white pants hadn't even gotten in the car?

SA: The one, the light skinned guy didn't even get into the car yet when the other car started up.

ME: Right now for the tape (inaudible) it looks like you are pointing down towards the lineup room.

SA: Well,

ME: That person you are talking about.

SA: Right.

ME: All right, everything you told us the truth, Mr. Savage?

SA: Yeah, sure. Unless you want to hypnotize me, it'll work then too.

ME: Okay. With that, there'll be no hypnotizing, we'll shut the tape off, I've got 1957 hours, 7:57 p.m., thank you.

END OF TAPE

People vs. Antonio Harris

Transcription of Interview with Enzor Savage

Medeiros: we're here with Mr. Enzor Savage. Mr. Savage, did I pronounce your name correct?

Savage: Yes.

Medeiros: All right. Mr. Savage, for the tape, would you please just spell your last name and give me a birth date.

Savage: S-A-V-A-G-E 7/29/54

Medeiros: Okay. Uh, and you reside here, correct, Mr. Savage?

Savage: Yes I do

Medeiros: Uh, earlier this evening, you gave, uh, statement I believe it was to Officer R. Ward concerning the incident that occurred outside tonight. In your words, why don't you tell us what occurred, then we'll ask questions afterwards.

Savage: About twelve o'clock tonight when I was going to get something out of the kitchen to drink, I could hear some people talking so I went to look out my living room. I didn't turn the lights on, I looked out my living room window, I couldn't see it, so I went back to the kitchen and opened up the window and I could hear them again so then I decided to take a real thorough look. I went downstairs, walked all the way to where, because I thought there was a break-in to one of the

cars, because I noticed two people sitting on the side over here (inaudible)

Medeiros: And, on what side was that, Hilton itself sir?

Savage: Right here on Hilton

Medeiros: Okay.

Savage: So I walked down and I walked up to the back of a red truck. They were sitting right there on the little corner piece that's up there where the fence is. I looked down and I asked them what's up. And they said nothing's up, we're just sitting here having a drink, and I said "Oh," so I backed up, came around, asked me did I have a light when obviously I already knew they had a light because I already saw them with the matches. So I told them no and I walked back up the stairs. As I was walking up the stairs there was about an 81 or 2 or 3 Cadillac Coup De Ville uh, grey or maybe a blue grey with a black top with navy blue with black interior sitting in front. As I came up the stairs they got in the Cadillac, started it up. By the time I got in the door, I didn't turn my lights on, I just peeked out the window at them, okay, got in the Cadillac, pulled up to the corner and stayed there for about two or three minutes. I didn't actually watch to see which way they went but they had tore off. After that, I got, took off my clothes, got into bed, start watching tv and about maybe thirty, forty minutes later, I could hear an argument and I could hear a guy hollering. So I didn't go to the window immediately but then it sounded like somebody was tapping on a bar door, so this time I decided to go to my bedroom window so I jumped out the bed, peeked through the blinds and as I was looking, I saw the Continental door, passenger door open. I saw a guy

standing over the door, still hollering and he stayed there for a few minutes. Then I noticed another guy coming up from where the phone booth is over here by the transmission or tune up place, hollering come on, "let's go."

Medeiros: And he went west of (inaudible)

Savage: Yes

Medeiros: All right, okay.

Savage: So, the other guy he still stood there so I figured, huh, maybe uh, they was breaking in the car but as he started walking away I realized he was the same guy that was sitting on the side of the building, the light skinned guy, with the bald head, black leather coat on, white pants, white shirt, then I noticed the dark guy, he was telling to come on, the other guy wasn't running. Just walked away, so I didn't think nobody was shot at the time, so I, I know Cadillacs, I've had about three of them. I should of ran to my bathroom window. I heard the car start up and they took off. They didn't drive past this way so they went back the opposite way. I decided to go downstairs and I looked over at the Continental and I tried to dial 911 the first time. I couldn't get through cause they was talking to somebody else so I dialed it again and when I was explaining it to her, it looks like, you know, it could be a car break in or somebody could have been shot, she got to asking questions and then I (inaudible) didn't want to go over towards the car but then I decided to go over towards the car and I noticed the hole in the window so I said okay well then there was (inaudible) so as I (inaudible) bring the ambulance I decided to walk over to the other side, that's when the neighbor of the pink house

		came out and she was hollering, "I know him." And I looked and I peeked, took a peek and saw the guy slumped over on his stomach, with a red shirt, red shoes on and then I told them it looks like the guys dead, we need to the ambulance or somebody here and that's that.
	Medeiros:	Now, could you go back when you heard the men, I guess outside talking the first time tonight, what's uh, you described one guy, light skinned guy with the bald head (inaudible) one of the best description (inaudible) to start off. Now the light skinned guy, the man, what race, Sir?
	Savage:	Still got the (Inaudible) uh, he was a male
	Cruz:	Yeah
	Savage:	Black, both of them.
	Medeiros:	Now, the light skinned guy, let's start with him please. How old do you think he was?
	Savage:	About twenty five.
	Medeiros:	Okay, uh
	Savage:	Light skinned, bald headed. It seems like I probably could have seen him somewhere before, I just can't place him but it looked like eyes could have been maybe not a dark brown but could have, probably been a light brown. He had on a black leather coat, white shirt. I didn't see his pants but when I was looking through the window they were white. The guy that's darker skinned, may be a little shade darker than me.
	Medeiros:	Wait a second, one second, trying to catch up with you. The light skinned guy,

how about a height and weight for him, Mr. Savage.

Savage: Well, they were sitting down at the time. But you know, noticing through the window, he looked like he was about my height and about my weight.

Medeiros: And you are about how big, Sir?

Savage: I'm about, I'm almost six foot and I'm two thirty four.

Medeiros: So he was about six foot, two thirty

Savage: About six foot, probably two thirty give a little, take a little

Medeiros: Did he have any facial hair on him? Mustache

Savage: No, I couldn't see no hair on him.

Medeiros: Okay. Did he talk to you, did he say anything?

Savage: He didn't say nothing, the one that was dark said something, what happened was the guy, the dark guy looked at me, but then the light skinned guy, he (inaudible) turned so I was trying to really get a look because I was trying to really look at him. I was standing with about from where

Medeiros: (Inaudible)

Savage: Yeah.

Medeiros: (Inaudible)

Savage: I would be trying to look at him and when he (inaudible) I saw a side of his head, I looked at him and I said I thought maybe it may have been the downstairs neighbors but then I said, no, these are not none of them. So he turned and looked at me and I got a good look at him and the dark skinned guy looked at me straight in the face.

Medeiros: Okay, we'll start, let's do with him. Male, uh, black also.

Savage: Male black

Medeiros: About how old Sir?

Savage: About twenty five.

Medeiros Okay, same size as the other guy and you or

Savage: Probably about the same size but he was a lot smaller in build.

Medeiros: Okay. Would you describe his build as thin

Savage: Thin

Medeiros: Okay. Six foot, thin build

Savage: Yeah about six foot thin build.

Medeiros: What type of hair did he have the dark skinned guy?

Savage: He had, uh, let's see, he had his hair was longer than mine so it's probably a half an inch, my hairs (inaudible)

Medeiros: a natural hair like yours?

Savage: Yeah

Medeiros: hair that's natural. Any facial hair on him?

Savage: Yeah, it's a little thin mustache, bubble eyes like I got.

Medeiros: Okay and you said he was dark skinned, right sir?

Savage: Yeah, black.

Medeiros: And, how about his clothing Sir?

Savage: He had on a leather coat, too.

Medeiros: Black leather coat?

Savage: Yes.

Medeiros: Do you remember what color pants?

Savage: No, I didn't see his pants.

Medeiros: Anybody else out there with them?

Savage: No, it was just them two.

Medeiros: Okay. So, they are standing right here on the Hilton side.

Savage: They're sitting right out here for about at least thirty minutes because what I did is I thought they was trying to you know (Inaudible, covered by Medeiros)

Medeiros: (Inaudible)

Savage: (inaudible) one of the cars so I did, just I thought, I'd scare them, I hold my kitchen window and slammed it and then I went back to the window and they wouldn't budge, so I said okay, maybe they're up to something so I try to hear what they're saying, so I decided I'd put my pants on and stuff. I went down there in my slippers and I just looked at them it was kind of let them know I know you're out here so I hope you all not trying, you know,

Medeiros right

Savage: do anything wrong so as soon as I jammed them up that's when the guys, when I turned and went back upstairs they immediately jumped in the Cadillac and I know it was a Cadillac, they was riding in a Cadillac, they was, they just didn't go past by (inaudible) of the Cadillac

Medeiros: Okay, now they are right out here, both of them, where did you first see the Cadillac

Savage: The Cadillac was right here in front of the white car

Medeiros: Okay, you are pointing right outside,

Savage: Right out here in front of

Medeiros: In front of Hilton

Savage: Right where the white car where the police car is right there

Medeiros: Was it facing Bancroft or the other way?

Savage: It was facing towards Bancroft

Medeiros: Okay and you described it as an 81

Savage: 81, 82 or 83 Coupe De Ville with a black top, half black top with black interior

Medeiros: Okay, was there anybody else in that car?

Savage: Only two

Medeiros: Okay. Was the engine running when they were out there do you know?

Savage: No, the engine wasn't running at all, the car was parked.

Medeiros: Which one, could you see which one hit the drivers seat when they left.

Savage: No, uh, you know what? Matter of fact, I believe the dark skinned guy, because when I looked through the window down, we were looking, I didn't have a (Inaudible) but I kind of had the window cracked (inaudible) window, I uh, peeked through, I could see the white so I believe the dark skinned guy was driving.

Medeiros: Okay, but could you tell, did you see them both get into the car?

Savage: I saw them both get into the car.

Medeiros: Okay and when you got to Bancroft here, could you tell which way they took off?

Savage: No, I, because there's a tree right there and like I wasn't really, I could see the back of, (inaudible) stayed there for about two or three minutes and then after that when they pulled off I didn't pay no attention.

Medeiros: And then there was, about a half hour later you heard the, you thought it was a knocking on a bar?

Savage: Well, after I heard the knocking on the, I really didn't even go to, after I heard it, I turned, I had my remote, I turned the tv on mute and I just laid there. And I said, oh, well you know, maybe somebody was knocking on the door and then I could hear somebody hollering. So after that, I decided to go to the window when I pulled the blind, you know, I didn't turn the light on, I just pulled the blind, I was looking out the window, I saw the guy, light skinned, I didn't know it was him yet, but I was looking and he was standing over the car and he was still talking.

Medeiros: Was he standing over the car that the victim was in?

Savage: Right

Medeiros: That was a white car, do you know what type it was?

Savage: It looked like it could have been a white or a cream, light colored wall, I know it had to be a Continental, I believe, but I kept looking and I saw and, after I couldn't see him talking to nobody.

Medeiros: And that was the white skinned guy

Savage: Yeah

Medeiros: Was he on the passenger side

Savage: He was on the passenger side, standing at the door and the door was open. And he

was standing there and he was just talking. Matter of fact, he was standing, he had his arm up on the door and I was looking at him and I was trying, I don't see nobody but after that I could hear another guy walking because you know my bathroom window was open, I could hear the other guy just hollering, come on, man would you please, get, let's get the fuck, come on, let's go. And the other guy, he turned, I thought that he was looking up at me but the lights off, you could see you know, my tv blaring and he didn't even rev man, he took (inaudible) and he just walked (inaudible)

Medeiros: The light skinned guy and the guys he was walking with

Savage: The guy was walking like it wasn't nothing, he was just walking. The other guy, he was ready to go, he, you could hear him running back to the car and by the time you could count to like twenty, you could hear the car start up and then burn off and then just drove off.

Medeiros: Did you see anybody, when the light skinned guy is on the passenger side of the, Uh, Continental, anybody else out there?

Savage: I didn't see nobody.

Medeiros: Any other cars pulled away?

Savage: I didn't see no other cars?

Medeiros: Okay, do you remember what the light looks like when you look out there where the car was?

Savage: It, it was dark but it was clear. I could see.

Medeiros: Okay. Uh, (inaudible) do you seem pretty sure it was the same two guys

Savage: That was the same, (inaudible) a light skinned guy, light skinned with the leather jacket on, it was him. I, I, I know it was him. I was looking dead at him because after, (inaudible) I said that's the same guy that was on the side of the building. That's what I, I said, Oh shi, I wasn't really tripping, I said to myself when I saw the Continental, I said maybe they was just breaking into the car or probably they was casing or when I was here the little bang bangs, whatever it was, they was trying to break the car open but when the door was open and it was sitting there after I heard, he was standing there and he was just looking like he was, he was saying something, he was saying but he was standing there, he wouldn't move until the other guy kept hollering at him to go.

Medeiros: Did he seem, he was saying something, what did his demeanor look like, standing at the, the passenger side.

Savage: Shh, he was calm.

Medeiros: He was calm

Savage: He was calm like he wasn't worried, that's what tripped me out. That's why he walked away, he didn't run and then that's when I decided to go out here and see what they were up to.

Medeiros: Okay. (Ringing of phone covers)

Savage: Yes, you ready? All right I'll be there in a few minutes, bye.

Medeiros: Where are we now? Uh, your statement says about thirty to forty minutes later I heard some arguing

Savage: Yeah

Medeiros: By the windows. Where did the arguing seem like it was coming from?

Savage: Right there from the car.

Medeiros: How many voices did you hear, sir?

Savage: I could only hear one, you know, because like I said, the tv was on but I could hear but I was really paying no attention, and then after I heard a little, little tap taps, I could still hear the guy hollering and you know and the next thing I know he's still standing there because that's when I decided

Cruz: (Inaudible)

Savage: made me look and then I went to the window and I peeked out and I was just looking and I just saw the guy stand, I couldn't see who he was talking to because I couldn't see nothing, I just saw his arm on the door and he was just standing there, then when I heard the other guy, when I heard the other guy hollering man, come on, come on, then I said, oh oh, something's up and when he started walking away really slowly, I looked down at the front window and I said, that's the dark guy and then I looked and I said, I'll be damned them the two guys on the side of the building.

Medeiros: Have you ever seen them around before?

Savage: You know how you've just seen a face before?

Medeiros: Uh-huh

Savage: I've seen the light skinned guy face before, I just can't place where I seen him at.

Medeiros: How, when you are out there talking to them, you were within six to seven feet of them

Savage: Okay, when you guys just looked up when I saw you looking up

Medeiros: Uh-huh

Savage: I was at the back tail of the red truck

Medeiros: Okay

Savage: Right there, where you can sit right there, they were sitting there and that's how close I was to them

Medeiros: Uh, could you identify these two if you saw them again.

Savage: I probably could if I saw them.

Medeiros: And, just to clarify, the person who was in the car, the white car, what seat was the victim, what seat was he in?

Savage: The victim that's dead now?

Medeiros: Yes Sir

Savage: He was laying on the passenger side on his stomach.

Medeiros: Okay

Savage: He had on a red shirt and red shoes, I was looking.

Medeiros: Anybody else in the car with the passenger

Savage: I didn't see anybody

Medeiros: Sergeant Cruz

Cruz: Yes. Sir, when you went out there first time, you saw (inaudible) and they told you they were just out there doing something, were they drinking that night?

Savage: Uh, I don't know if they was drinking, but I know I seen them already flicking a light, you know, they was smoking, it could have been a joint or a cigarette but

they was sitting there. The guy said that, oh we're just sitting here drinking, but you know, then, when I backed up, then they asked me for a light and I'm saying (inaudible) you think I'm stupid, you know they already was lighting whatever it was they was lighting up there so that's when I backed up off of them. Cause I said no, I'm not going to get too close up on them.

Cruz: Which window were you looking out of when you uh, after you heard the bang bang

Savage: My bedroom window

Cruz: Okay, did you hear the argument, argument before you heard the bang bang?

Savage: I heard the argument, well, obviously my tv was going they was probably, probably arguing. But I didn't really start concentrating on it until after the bang bang and then I decided to turn my tv with the remote, then I could still hear the guy hollering.

Cruz: I think, at one point, you said you heard somebody screaming.

Savage: That one was hollering, I don't know, I think he might have been the guy that was standing over the door. It was like he was still hollering at him like you know whatever he was shouting for, whatever it was. But I guess he was still hollering, like I said I didn't see what happened as far as the shooting. I, I should have jumped up there the first time I, I usually do but I didn't. Because they didn't sound like gunshots when I first heard it.

Cruz: Did you hear any women's voices out there?

Savage: No, I didn't hear no woman that I know of. If there was a woman she must have

broke and ran during the time that when I decided to get up and look out the window. Why did (inaudible) say she seen it too?

Cruz: Uh, we don't discuss (inaudible)

Savage: Well,

Medeiros: No, it's okay, I appreciate your curiosity.

Cruz: I don't have any other questions.

Medeiros: How many, you said it was like knocking on the bar

Savage: Something like maybe, three four

Medeiros: three or four

Savage: five maybe because anywhere from three to five.

Medeiros: Okay, sir, uh, anything else you think we should know, Mr. Savage?

Savage: That's about it.

Medeiros: Okay. I totally appreciate your cooperation. Everything you said told us the truth sir?

Savage: Yeah, I was the one that called.

Medeiros: Okay, with that I'm going to shut the tape off. I have five o four a.m. Zero five oh four hours.

END OF TAPE

EXHIBIT COVER PAGE

C
EXHIBIT

Description of this Exhibit: DEFENSE INVESTIGATION REPORT

Number of pages to this Exhibit: 6 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☒ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

Linda L. Bruzzone
Private Investigator
State License No. PI 14641
143 Edmonds Court
Vacaville, California 95687
Phone 707-453-0658
slbruzzone@earthlink.net

August 14, 2000

Gary L. Sherrer
Attorney at Law
2100 Embarcadero
Oakland, California

Re: People vs. Lockhart

Dear Mr. Sherrer:

On August 10, 2000, Enzor Savage was interviewed at his residence, the address of which is reflected upon the police report in the above entitled matter. He was advised we were private investigators and were looking into the matter for you, the attorney of Lockhart. He agreed to speak to us, however made it quite clear that he had no intent of changing his statement, that it stood. He was told we weren't interested in any change of statement, we were interested in obtaining clarification and more detail of what he observed and desired a truthful statement.

Mr. Savage invited us into his living room and advised the following:

On the date in question, he was in bed, in his bedroom, across the street from the crime scene. His windows were open as it was a warm evening. He heard noises from down below, next to the side of the house. There was a banging sound like the sound of a bar door closing. He slammed the window closed in order to encourage them to leave.

He went to the left right window of his home and again looked out onto the individuals. He thought one looked like his friend, Jacob, which he thought to be unusual as Jacob wasn't ordinarily out that early. He looked closer

and determined it wasn't Jacob.

Concerned, he went outside, exiting the front stairs. He approached where the two men were standing, approximately ten feet from him. Parked in front of his house at 5516 Hilton was a blue Cadillac. He stated he walked by the blue Cadillac and looked inside of it, observing the arm rest. He approached closer to the individuals. He asked them, "What's up?" He stated one of the individuals stated, "We're doing something, do you have a match?" He found that to be unusual as he noted the individual had previously lit something. He backed up and away from them and went back into the house, fearing for his own personal safety.

He stated he then went back to bed and laid down. Shortly thereafter, he again arose and went to the window. He observed the two men leave in the blue Cadillac. The light skinned man with white pants sat in the passenger side while the other individual drove off. He stated both individuals were dressed in black. He was unwilling to provide identifying information regarding the other individual who was the driver with the exception of stating it was Eric Lockhart. (See more of the Lockhart identification below.)

He returned to bed and shortly thereafter heard arguing outside, coming from Bancroft Street. Very shortly after hearing the voices, he heard a quick repetitive sound of shots. (bang, bang, bang, bang) He arose and looked out his window. In front of 5555 Bancroft, he saw an individual standing by the passenger door of a Lincoln Continental. The person had his hand on the car door and was leaning toward the door. He stated the individual stood there for minutes. He thought perhaps this individual was breaking into a car. This person was wearing white pants, a black jacket and was a light skinned black man.

He ran into his bathroom and looked out his bathroom window. He saw the same blue Cadillac that was previously parked in front of his home parked in the parking lot of the business next to the apartment building located at 5555 Bancroft Avenue . He stated he observed the other individual he had previously seen in front of his home, standing by the corner and was yelling at the subject standing by the Cadillac. He saw this person then begin running from the Cadillac and down the block toward the vehicle, stopping half way, continuing to yell. The individual standing by the Continental still didn't leave, continuing to stand and look into the vehicle. He then slowly and methodically walked away from the car toward the Cadillac and the person standing halfway between the Cadillac parked in the parking lot next to the apartment building. He heard the man who walked from the Cadillac state, "Come on, let's get the (expletive) out of here." He stated the two then proceeded toward the Cadillac. He did not see them get into the

driver's seat, however stated he heard the Cadillac start up, recognizing it as the same vehicle previously. He saw the Cadillac leave but did not see in which direction the vehicle traveled.

After viewing this, he stated he called 911 and went down onto the street to see what occurred. He noted the right passenger door was open. He walked over to it. He stated he told the 911 dispatcher that the doors of the vehicle were open and maybe they should get somebody to come out. He noted the back window, on the drivers side was shattered. He saw an individual in the front seat laying face down.

Savage stated he relayed the information to dispatch and then met with investigators. He stated he was reluctant to testify and cooperate with investigators because he was treated poorly by police when he witnessed a homicide in front of his home several years prior. As a result, in this current matter, he stated he told police he didn't wish to attend a physical lineup and the police called begging him to attend. He stated he was angry with the investigators in this matter as they wouldn't give him information he requested regarding the matter. He stated the police officers advised him they couldn't tell him. He asked details from us regarding the matter and we advised we couldn't tell him either, as we didn't wish to bias the investigation.

When asked to attend the second live lineup, he stated he watched the individuals as they entered the room. One individual appeared familiar to him, though he could not remember what number in the lineup the individual was. He stated, at that time, he recognized the person to be Eric Lockhart. He advised while watching the lineup, he uttered, "Fuck, fuck." He stated he was angry and decided not to formally identify him at that time. He said he simply decided to go home and not say anything.

Savage stated he had known Lockhart and his brother, Michael, for many years previous to the date of the lineup. He dated this back to approximately twenty years previously. He said he would go to the Lockhart home and Eric was young at that time. He stated he knew them both.

Savage was asked if the individual who was outside his home was Lockhart. He declined to answer. He was asked if the individual who was standing at the driver's door of the vehicle was Lockhart. He stated it was not. He advised Lockhart was the driver of the Cadillac and was the individual who was standing in the parking lot where the Cadillac was parked and that Lockhart was the individual who began to approach the man standing by the Continental. He stated he saw Lockhart drive the car away, though did not know in what direction the vehicle went.

Mr. Savage was asked if he recalled stating the second individual was bald. He did not recall this, though stated "bald" meant that there could have been very short hair upon the head. He also stated people can change their hairstyles in prison.

Mr. Savage was shown a photograph and asked if the individual in the photograph was familiar to him in any way. He looked at it for a brief period of time, then sat back, stating he wasn't going to make any comment. He stated he would recognize and identify the second individual when he saw him in court.

He was asked a description of Mr. Lockhart. He declined to provide a description, again stating he would identify the individual in court.

He was read the supplemental report by Detective Medeiros. He stated he did call Medeiros, though doesn't recall the text entered by Detective Medeiros. He stated after going to the lineup, seeing Lockhart and then receiving a telephone call from friends, he was angry Lockhart could have done something like that, that murder wasn't justified. He declined to provide any other information regarding the lineup or any other definitive information about Lockhart or his identity.

Mr. Savage was concerned his comments may be "twisted" in some manner by defense investigators. He seemed somewhat apologetic regarding his refusal to give a statement, stating he many get "amnesia" in court when asked questions regarding our conversation this date.

Sincerely,

Linda L. Bruzzone

Attempts were made to find Allbright. Nobody was at his residence in Campbell Village. Street people were consulted. He hasn't been seen lately. We were told he was in the 80s slinging heroin. 81st and B. We were also told to check 24th and West.

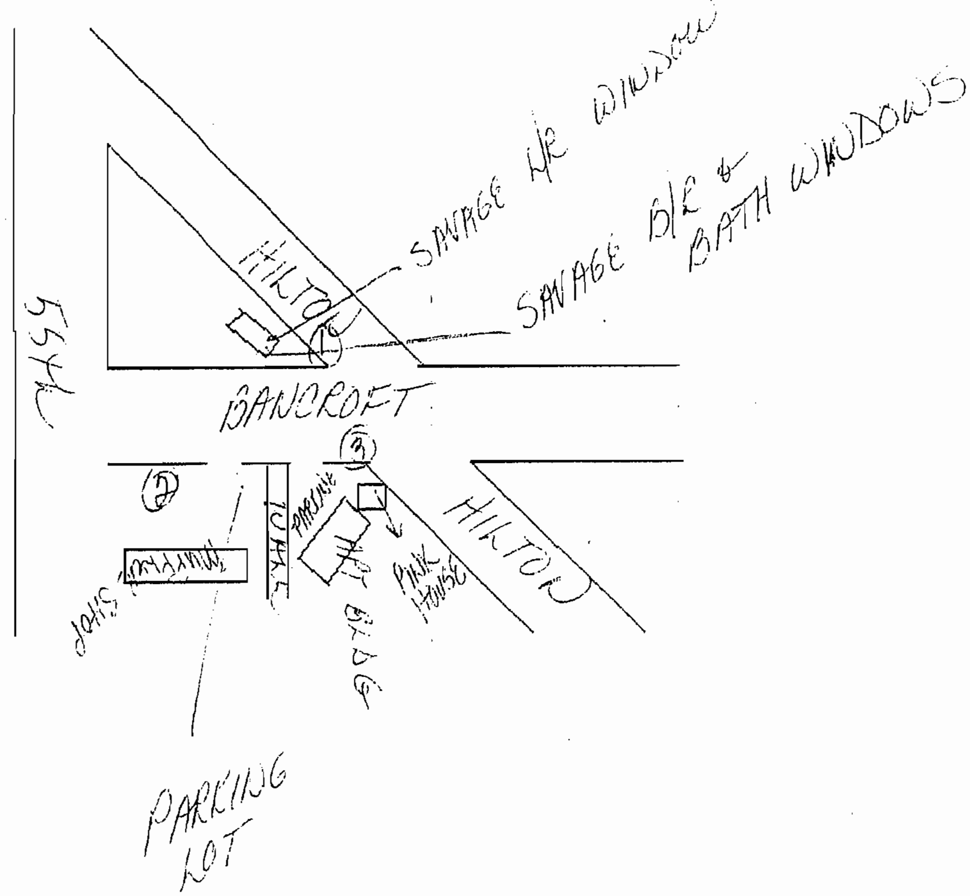
We went to those areas three times on the 10th as well as back to Campbell Village twice, he was not at home.

A neighborhood canvas was conducted. No direct information obtained. Hearsay, child heard gunshots, heard man say, "Why did you do that, why did you do that?" Then heard, "Sweet, Jesus," "Sweet, Jesus." (probably from the victim) No eyewitnesses.

Interviewed Savage above. Stayed late to review crime scene at night. Area is brightly lit. Savage has a panoramic, clear view from his rear, not good. As well, the front of Savage's house offers clear view to front of vics house, he claims they were laying in wait, sure that is DA's premise.

No one was home @ [illegible] house either. She promised to call back. May left w/ her friend. She is the former girlfriend of Allbright.

Say, call when you get the story.



1) Where Savage states car was
and they were sitting when first
saw. They had a clear view of where
VC Car would be. D.A. will be wait ?
working on a theory of "laying in ~~wait~~"

2) Where Savage states he sees car again
after shooting takes place. This is about
1/2 blk from (V) Car.

3) Vic's Car, No to scale. There is room for
three cars to park behind its until
driveway to apt parking lot.

EXHIBIT COVER PAGE

D
EXHIBIT

Description of this Exhibit: OFFICER THURSTON REPORT

Number of pages to this Exhibit: 8 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☒ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

CRIME REPORT

OAKLAND POLICE DEPARTMENT
455 – 7th Street
Oakland, CA 94607-3985

Assign To: Homi / Medeiros

RD No. 00-44120

ROUTING: ☐ CID ☐ YSD ☐ VICE ☐ CSD ☐ TRAFFIC ☐ D.A. VICT/WIT

Outside Reporting Agency | Case No. | Police Beat: 27 | CP Beat: 27 | Incident No.: 70

VICTIM — LAST, First, Middle: BROWN GERALD DEWAYNE | Sex: M | Race: B | DOB: 14 OCT 52 | Age: 48

Home Address: 5555 BANCROFT AVE # B | City: ☒ Oakland | Zip: 94605 | Home/Msg. Phone ( )

Business Address / School | City: ☐ Oakland | Zip | Work Phone ( )

Occupation | D.L. No. | State | ☐ Domestic Violence ☐ Victim Injured ☐ Sex Assault Victim Request Conf.

Working Hours | ☐ Victim's Support ☐ Resource Info Provided

ADDITIONAL PERSON ☐ RP ☐ Parent ☒ Witness — LAST, First, Middle: SAVAGE ENZOR | Sex: M | Race: B | DOB: 29 JUL 54 | Age: 45

Home Address: 5515 HILTON # C | City: ☒ Oakland | Zip: 94605 | Home/Msg. Phone (510) 536 2334

Business Address / School: 2900 ATLAS RD. | City: ☒ Oakland | Zip | Work Phone (510) 248 2516

LOCATION	POINT OF ENTRY	LOCATION P.O.E.	METHOD OF ENTRY		BURGLARY	WEAPON USED
☐ BANK/ATM	☐ DOOR		☐ OPEN/UNLOCKED	☐ BREAK GLASS	☐ AUTO	☒ FIREARM
☐ CONV MKT	☐ WINDOW	☐ FRONT	☐ FORCED SCREEN	☐ REMOVE DOOR	☐ RESIDENCE	☐ CUT/STAB INSTR
☐ GAS STATION	☐ GARAGE	☐ REAR	☐ CUTTING DEVICE	☐ REMOVE WINDOW	☐ COMMERCIAL	☐ HANDS, FEET, FIST
☐ OTHER COMM	☐ ADJ PREM	☐ SIDE	☐ BODY FORCE	☐ POSS EMPLOYEE	☐ OTHER	☐ CHEMICAL
☐ RESIDENCE	☐ VENT/SKYLIGHT	☐ ROOF	☐ PRY TOOL	☐ KEY		☐ NONE
☒ STREET	☐ OTHER	☐ UNK	☐ CHANNEL LOCKS	☐ WATER METER		☐ OTHER
☐ MISC			☐ ATTEMPT FORCE	☐ NONE	☐ ALARM RESPONSE	
				☐ UNK		

☐ Gang Related | ☐ Hate Crime Motivated By: ☐ Race ☐ Ethnicity ☐ Religion ☐ Sexual Orientation ☐ Physical Disability ☐ Mental Disability ☐ Gender

CRIME — Common Name: MURDER | Section / Subsection: 187(A) | Code: P.C. | Pertains To: V: 1

Location (Address/Block No./Intersection): IFO 5555 BANCROFT AVE. | ☐ OHA ☐ ABC

	Date	Time	Day
Occurred	15 MAY 00	0049	MON
To			
Reported	15 MAY 00	0015	MON

VANDALISM: ☐ EGGED ☐ BREAK WINDOW ☐ SHOOT WINDOW ☐ GRAFFITI ☐ MAIL BOX ☐ KEYING/SCRATCHING ☐ SLASH TIRES ☐ OTHER

LOSS ☒ NONE

CHECK ALL THAT APPLY:
1 ☐ CURRENCY/NOTES 7 ☐ HOUSEHOLD GOODS
2 ☐ CLOTHING/FURS 8 ☐ CONSUMABLE GOODS
3 ☐ JEWELRY/PREC.METAL 9 ☐ LIVESTOCK
4 ☐ FIREARMS 10 ☐ MOTOR VEHICLES
5 ☐ OFFICE EQUIPMENT 11 ☐ MISCELLANEOUS
6 ☐ TVS, RADIO, STEREO

U.C.R. CODE

TYPE OF THEFT: ☐ PICKPOCKET ☐ PURSESNATCH ☐ AUTO ACCESS ☐ AUTO CLOUT ☐ SHOPLIFTING ☐ BICYCLE ☐ COIN OP. DEVICE ☐ FROM BUILDING ☐ OTHER

SOLVABILITY FACTORS (Check All That Apply): ☐ SURVEILLANCE PHOTO ☐ SERIOUS INJURY ☐ EVIDENCE ☐ SUSPECT IN-CUSTODY ☐ NAMED SUSPECT ☐ IDENTIFIABLE SUSPECT ☐ R/O REQUESTS INVESTIGATION

☐ THE VICTIM / REPORTING PARTY contacted the police department to report the THEFT / LOSS / DAMAGE of the listed property. There are no known suspects. This report is made to alert the police. No narrative was completed.

VICTIM VEHICLE — License No.: 2 NCS 804 | State: CA | ☐ Secured at the Scene ☐ Released to the Owner ☐ Hold (Unit) | ☐ Towed ☐ Fingerprinted ☐ Stolen | Tow No.

☒ Car ☐ Truck ☐ Other | Yr: 89 | Make: LINC | Model: CON | Body Type: 4D | Color: CREAM | VIN: 1LNLM9847KY676717

Stolen Bicycle ☐ | ☐ Mens ☐ Womens | ☐ Mtn. ☐ Road | Color | Brand | Model | Speed | License No. | Serial No.

PROPERTY/NARRATIVE ☐ Loss ☐ Evidence ☐ Safekeeping ☐ Recovered | Location When Stolen: ☐ Interior ☐ Exterior ☐ Garage

Item	Qty	Item Type, Brand, Model No., Size, Color, Marks, etc.	Serial No.	$ Value

Total Number of				☐ Phone Report	Photos Taken	Evidence Collected	Tech		Rec Value	Loss Value	Page 1
Vict: 1	Wit: 1	Susp: 2	Arr: Ø		☒ Yes ☐ No	☒ Yes ☐ No	On Scene: ☒ Yes ☐ No	Tag Left: ☐ Yes ☒ No	Ø	Ø	of 6

Reported By	Serial No.	Watch	Area	Supervisor	Serial No.	Reviewer	Serial No.
D. THURSTON	8262	1	III	LT. WILLIAMS		SGT Medeiros	7774C

536-933 (3/99)

OPD POLICE REPORT — SUSPECT REPORT

Oakland Police Department
455 - 7th Street
Oakland, CA 94607

RD # 004/4/20

CRIME: 187(a) P.C. | INCIDENT NO. | V1 | VICTIM LAST, First, Mid.: BROWN GERALD DEWAYNE

SUSPECT

Number: 1 | LAST, First, Mid. | RELATIONSHIP TO VICTIM | INCUSTODY THIS OFFENSE [ ] YES [X] NO | CITE #

SEX	RACE	D.O.B.	AGE	HEIGHT	WEIGHT	HAIR	EYES	DL NUMBER	PFN
M	B		25	6'0"	230	BALD			

HOME ADDRESS | CITY [ ] OAKLAND | ZIP | APT. NO. | HOME/MSG. PHONE ( )

WORK ADDRESS (Name of Business) (School) | CITY [ ] OAKLAND | ZIP | OCCUPATION | WORK PHONE ( )

ADMONISHMENT: ADMONISHED [ ] YES [ ] NO REFUSED [ ] YES [ ] NO STATEMENT [ ] YES [ ] NO

BY: (OFFICER/DATE/TIME:)

[ ] PROBATION COUNTY _____ Officer _____

[ ] PAROLE AGENT _____ [ ] PAL

DESCRIPTION PROVIDE BY: W/M | CLOTHING, SCARS, MARKS, TATOOS, WORDS USED: BLK JACKET WHT PANTS

HAIR LENGTH	HAIR STYLE	FACIAL HAIR	COMPLEXION	APPEARANCE	SPEECH	DEMEANOR
[ ] SHORT	[ ] NATURAL / AFRO	[X] NONE	[X] LIGHT (YELLOW)	[X] CASUAL	[ ] LOW PITCH	[X] CALM
[ ] MED. (HALF EAR)	[ ] BRAIDED	[ ] BEARD	[ ] MEDIUM	[ ] WELL GROOMED	[ ] HIGH PITCH	[ ] POLITE
[ ] LONG (COVER EAR)	[ ] CREWCUT	[ ] MUSTACHE	[ ] DARK	[ ] UNKEMPT	[ ] SLURRED	[ ] APOLOGETIC
[ ] COLLAR	[ ] CURLY	[ ] BEARD & MUSTACHE	[ ] FRECKLED	[ ] RIGHT HANDED	[ ] STUTTER	[ ] NERVOUS
[ ] SHOULDER	[ ] PONYTAIL	[ ] GOATEE	[ ] ACNE	[ ] LEFT HANDED	[ ] ACCENT	[ ] PROFESSIONAL
[X] BALD/SHAVED	[ ] PUNK	[ ] SIDEBURNS	[ ] POCKMARK	[ ] BIRTHMARK	TYPE _____	[ ] OFFENSIVE
[ ] RECEDING	[ ] CONSERVATIVE		[ ] BUDDY	[ ] MOLE	[ ] OTHER	[ ] HOSTILE
						[ ] VIOLENT

OTHER DISTINCTIVE FEATURES			WEAPON USED					
[ ] BODY ODOR TYPE _____			[ ] REVOLVER	[X] SEMI-AUTO PISTOL	[ ] SHOTGUN	[ ] RIFLE		
[ ] GOLD TOOTH	[ ] MISSING TEETH	[ ] LARGE EYES	CAL .380	BARREL _____	[ ] SAWED OFF	[ ] NICKEL	[ ] BLUED	
[ ] SILVER TOOTH	[ ] GLASSES	[ ] MISSING LIMBS	[ ] BLUDGEON / CLUB	[ ] HANDS / FEET	[ ] ROCK / BRICK	[ ] CUT / STAB	[ ] VEHICLE	

SUSPECT

Number: 2 | LAST, First, Mid. | RELATIONSHIP TO VICTIM | INCUSTODY THIS OFFENSE [ ] YES [ ] NO | CITE #

SEX	RACE	D.O.B.	AGE	HEIGHT	WEIGHT	HAIR	EYES	DL NUMBER	PFN
M	B		25	6'0"	175	BLK			

HOME ADDRESS | CITY [ ] OAKLAND | ZIP | APT. NO. | HOME/MSG. PHONE ( )

WORK ADDRESS (Name of Business) (School) | CITY [ ] OAKLAND | ZIP | OCCUPATION | WORK PHONE ( )

ADMONISHMENT: ADMONISHED [ ] YES [ ] NO REFUSED [ ] YES [ ] NO STATEMENT [ ] YES [ ] NO

BY: (OFFICER/DATE/TIME)

[ ] PROBATION COUNTY _____ Officer _____

[ ] PAROLE AGENT _____ [ ] PAL

DESCRIPTION PROVIDE BY: W/M | CLOTHING, SCARS, MARKS, TATOOS, WORDS USED: BLK JACKET

HAIR LENGTH	HAIR STYLE	FACIAL HAIR	COMPLEXION	APPEARANCE	SPEECH	DEMEANOR
[X] SHORT	[X] NATURAL / AFRO	[ ] NONE	[ ] LIGHT	[X] CASUAL	[ ] LOW PITCH	[X] CALM
[ ] MED. (HALF EAR)	[ ] BRAIDED	[ ] BEARD	[ ] MEDIUM	[ ] WELL GROOMED	[ ] HIGH PITCH	[ ] POLITE
[ ] LONG (COVER EAR)	[ ] CREWCUT	[X] MUSTACHE	[X] DARK	[ ] UNKEMPT	[ ] SLURRED	[ ] APOLOGETIC
[ ] COLLAR	[ ] CURLY	[ ] BEARD & MUSTACHE	[ ] FRECKLED	[ ] RIGHT HANDED	[ ] STUTTER	[ ] NERVOUS
[ ] SHOULDER	[ ] PONYTAIL	[ ] GOATEE	[ ] ACNE	[ ] LEFT HANDED	[ ] ACCENT	[ ] PROFESSIONAL
[ ] BALD/SHAVED	[ ] PUNK	[ ] SIDEBURNS	[ ] POCKMARK	[ ] BIRTHMARK	TYPE _____	[ ] OFFENSIVE
[ ] RECEDING	[ ] CONSERVATIVE		[ ] BUDDY	[ ] MOLE	[ ] OTHER	[ ] HOSTILE

OTHER DISTINCTIVE FEATURES			WEAPON USED					
[ ] BODY ODOR TYPE _____			[ ] REVOLVER	[ ] SEMI-AUTO PISTOL	[ ] SHOTGUN	[ ] RIFLE		
[ ] GOLD TOOTH	[ ] MISSING TEETH	[X] LARGE EYES	CAL _____	BARREL _____	[ ] SAWED OFF	[ ] NICKEL	[ ] BLUED	
[ ] SILVER TOOTH	[ ] GLASSES	[ ] MISSING LIMBS	[ ] BLUDGEON / CLUB	[ ] HANDS / FEET	[ ] ROCK / BRICK	[ ] CUT / STAB	[ ] VEHICLE	

SUSPECT VEHICLE

VEHICLE WAS [ ] TOW (#) _____ [ ] SECURED AT SCENE [ ] FINGERPRINTED [ ] RELEASED TO OWNER [ ] HOLD (UNIT) _____

DAMAGE DETAILS, UNIQUE FEATURES | OTHER DESCRIPTION

OWNER | ADDRESS | CITY [ ] OAKLAND | ZIP | PHONE

LIC./STATE/OR PLATE COLORS	YEAR	MAKE	MODEL	STYLE	EXTERIOR COLOR	CONDITION	INTERIOR COLOR	INTERIOR
	81-82	CADI	COUPE	2D	LT BLU/SIL	[X] CLEAN [ ] NEW [ ] DIRTY [ ] POOR		[ ] CLEAN [ ] ODOR [ ] DIRTY

TIRES	RIMS	LEVEL	ROOF	WINDOWS	SEATS	TRANSMISSION
[X] STOCK [ ] WIDE [ ] SMALL	[X] STOCK [ ] CHROME [ ] MAGS [ ] SPOKE	[X] STOCK [ ] LOWERED [ ] RAISED	[X] VINYL BLK [ ] LANDAU [ ] CONV	[ ] TINTED [ ] BROKEN	[ ] VINYL [ ] BENCH [ ] CLOTH [ ] BUCKET	[ ] AUTOMATIC [ ] MANUAL

REPORTED BY	SERIAL #	WATCH	DISTRICT	SUPERVISOR	SERIAL #	
D. THURSTON	3262P	I	V	LT WILLIAMS		PAGE 2 OF 6

ADDITIONAL INFORMATION REPORT

OAKLAND POLICE DEPARTMENT
455 - 7th Street
Oakland, CA 94607

RD # 004/41/20

CRIME	[ ] SUPPLEMENTAL	INCIDENT #	V1	VICTIM LAST, First, Mid.
187 P.C.		70		BROWN, GERALD

SUSPECT LAST, First, Mid.	INCIDENT LOCATION	DATE OF THIS REPORT	ORIGINAL DATE REPORTED
UNK	IFO 5555 BANCROFT AVE	15 MAY 00	

ITEM #	QNTY.	PROPERTY (CIRCUMSTANCE) ITEM TYPE, BRAND, MODEL #, SIZE, COLOR, MARKS, ETC.	SERIAL #	VALUE

SUMMARY: ON 15 MAY 00, AT ABOUT 0040 HRS, I WAS WORKING AS O.P.D PATROL UNIT 1L27, WEARING A FULL POLICE UNIFORM AND DRIVING MARKED PATROL CAR # 1728. RADIO DISPATCHED ME TO 5555 BANCROFT AVE TO INVESTIGATE A REPORT OF A SHOOTING. UPON MY ARRIVAL I MET WITH WIT / ONEAL, LATACHA, WHO DIRECTED ME TO A MAN LYING INSIDE OF A VEHICLE (LIC PLATE # 2NES804) IFO 5555 BANCROFT AVE PARKED ON THE SOUTH CURB FACING EAST.

I SAW THAT THE MAN (LATER ID'ED AS V#1 / BROWN, GERALD) WAS LYING IN THE RIGHT FRONT PASSENGER SIDE OF A VEHICLE FACE DOWN. HE WAS DRESSED IN A RED SHIRT, BLACK SLACKS, AND RED SHOES. HIS LEGS WERE POINTING EAST AND HIS HEAD WAS POINTING WEST. HIS ARMS WERE STRAIGHT ALONG HIS BODY. I NOTICED THAT BROWN HAD FIVE APPARENT GUN SHOT WOUNDS, THREE IN THE CHEST AND TWO IN HIS LEFT FORE ARM. THERE WAS A PUDDLE OF BLOOD GATHERING ALONG BOTH SIDES OF HIS BODY. BROWN WAS NOT RESPONSIVE AND HAD NO VITAL SIGNS. I ADMINISTERED CPR UNTIL MEDICAL UNITS ARRIVED.

AMR RIG # 501 RESPONDED TO THE SCENE. THEY WERE JOINED BY O.F.D TRUCK # 2558. BROWN WAS TRANSPORTED TO ACH WERE HE WAS PRONOUNCED DEAD AT 0116, 15 MAY 00. OFC M. BATTLE RESPONDED TO ACH AND ASSISTED AMR RIG # 501. (SEE OFC M. BATTLE # 5189 P SUPP FOR FURTHER DETAILS).

OFC N. CERECEDES, # B275 P, SPOKE TO ONEAL. ONEAL SAID THAT SHE WAS INSIDE HER HOUSE LOCATED AT 5601 HILTON ST. WHEN SHE HEARD SOME ONE ARGUING OUT SIDE. ONEAL SAID IT SOUNDED LIKE TWO MEN ARGUING

REPORTED BY	SERIAL #	WATCH	DISTRICT	SUPERVISOR	SERIAL #	PAGE
D. THURSTON	82627		5	LT. WILLIAMS		3 OF 8

536-937 (1/97)

ORI 00109

ADDITIONAL INFORMATION REPORT

OAKLAND POLICE DEPARTMENT
455 - 7th Street
Oakland, CA 94607

RD # 004420

CRIME	[ ] SUPPLEMENTAL	INCIDENT #		VICTIM LAST, First, Mid.
187 P.C.		70	V1	BROWN, GERALD
SUSPECT LAST, First Mid.	INCIDENT LOCATION		DATE OF THIS REPORT	ORIGINAL DATE REPORTED
UNK	IFO 5555 BANCROFT AVE		15 MAY 04	

ITEM #	QNTY.	PROPERTY (and/or NARRATIVE) ITEM TYPE, BRAND, MODEL #, SIZE, COLOR, MARKS, ETC	SERIAL #	VALUE

SUMMARY CONT: HOWEVER, SHE COULD NOT MAKE OUT WHAT THE DISAGREEMENT WAS ABOUT. ONEAL SAID APPROX 30-40 SECONDS LATER SHE HEARD A SCREAM FROM OUTSIDE WHICH SOUNDED LIKE A WOMANS SCREAM, IMMEDIATELY AFTER THE SCREAM ONEAL HEARD APPROX SIX GUN SHOTS ONE RIGHT AFTER ANOTHER AND THEN SHE HEARD A CAR SPEED AWAY IN AN UNKNOWN DIRECTION. ONEAL SAID SHE WENT OUTSIDE TO CHECK ON HER NEIGHBOR'S VEHICLE WHICH WAS PARKED IFO 5555 BANCROFT AVE AND SAW A MAN'S FOOT HANGING FROM OUTSIDE OF THE RIGHT FRONT PASSENGER SIDE. ONEAL SAID SHE RAN BACK INSIDE OF 5601 HILTON ST. AND CALLED O.P.D. OFC N. CERECEDES #8375 P TOOK A WRITTEN STATEMENT.

OFC R. WORD 8312 P RESPONDED TO 5515 HILTON ST. #C AND SPOKE TO WIT #2 / SAVAGE, ENZOR. SAVAGE SAID HE SAW TWO M-B SITING ON THE CORNER OF HIS APARTMENT COMPLEX. SUSP #1 DESCRIBED AS A M-B, 25 YRS, 6'0, 230LBS, BALD HAIR, LIGHT COMPLEXION, WEARING A BLACK JACKET, AND WHITE PANTS. SUSP #2 M-B, 25 YRS, 6'0, 175LBS, DARK COMPLEXION WEARING A LEATHER COAT, UNK PANTS. SAVAGE SAID HE SAW THE TWO SUSPECTS GET INSIDE OF AN 81 OR 82 CADILLAC COUPE DEVILLE EITHER LIGHT BLUE OR GRY IN COLOR WITH A BLACK TOP, 2 DOOR. SAVAGE WENT ON TO SAY HE LOOKED OUTSIDE OF HIS BEDroom WINDOW WHICH FACES BANCROFT AVE AND SAW THE CADILLAC DRIVE UP TO THE CORNER OF 55TH AVE AND BANCROFT AVE. SAVAGE SAID HE HEARD SOME ARGUING ABOUT 30 MIN - 40 MIN LATER AND THEN HEARD SOME LOUD NOISES THAT SOUNDED LIKE SOMEONE HITTING A BAR DOOR. SAVAGE SAID HE LOOKED OUT HIS BEDROOM WINDOW AND SAW SUSP #1 STANDING ON THE SIDEWALK IN FRONT OF 5555 BANCROFT AVE BY A LINC CONT. YELLING INTO THE CAR

REPORTED BY	SERIAL #	WATCH	DISTRICT	SUPERVISOR	SERIAL #	PAGE	OF
D. THURSTON	8262P	1	5	LT. WILLIAMS		1	8

536-937 (1/97)

ORI 00109

ADDITIONAL INFORMATION REPORT

OAKLAND POLICE DEPARTMENT
455 - 7th Street
Oakland, CA 94607

RD # 004420

CRIME	[ ] SUPPLEMENTAL	INCIDENT #	V1	VICTIM LAST, First, Mid.
187 P.C		70		BROWN, GERALD

SUSPECT LAST, First Mid.	INCIDENT LOCATION	DATE OF THIS REPORT	ORIGINAL DATE REPORTED
UNK	IFO 5555 BANCROFT AVE	15 MAY 08	

PROPERTY (and/or NARRATIVE)

ITEM #	QNTY.	ITEM TYPE, BRAND, MODEL, SIZE, COLOR, MARKS, ETC.	SERIAL #	VALUE

SUMMARY CONT: ON THE PASSENGER SIDE. SAVAGE SAID HE HEARD SUSP #2 TELL SUSP #1 TO "HURRY UP AND COME ON." SAVAGE SAID HE HEARD WHAT SOUNDED LIKE A CADILLAC TAKE OFF AND HEAD SOUTH BOUND ON 55TH AVE. SAVAGE SAID HE WALKED OUT OF HIS APARTMENT COMPLEX TO 5555 BANCROFT AVE WHERE THE LINC WAS PARKED AND SAW A M-B IN THE PASSENGER SEAT LYING FACE DOWN NOT MOVING. SAVAGE SAID HE CALLED O.P.D ON HIS CELL PHONE. OFC R. WORD TOOK A WRITTEN STATEMENT FROM SAVAGE, ENZOR.

OFC B. ORTIZ # 8132P RESPONDED TO 5532 HILTON ST. AND SPOKE TO BONNER, FRANKIE WHO SAID SHE HAD BEEN SITTING IN HER APARTMENT LOCATED AT 5532 HILTON ST. WHEN SHE HEARD 9-10 GUN SHOTS. BONNER SAID SHE LOOKED OUT HER WINDOW AND SAW A BLU CADILLAC SPEED DOWN THE STREET NORTH BOUND ON BANCROFT AVE. BONNER SAID SHE CALLED O.P.D AND WENT OUT SIDE ONCE O.P.D SHOWED UP ON SCENE. OFC B. ORTIZ TOOK A WRITTEN STATEMENT FROM BONNER, FRANKIE.

OFC D. VANTREE # 8198P RESPONDED TO 5555 BANCROFT AVE #B AND SPOKE TO BOATLEY, LAKISA WHO SAID BROWN CAME TO 5555 BANCROFT AVE #B AT ABOUT 00:30 OR 0045 HRS WOKE HER UP AND ASKED IF SHE WANTED TO GO TO THE VINTAGE INN. BOATLEY SAID SHE TOLD BROWN SHE DID NOT FEEL GOOD AND DID NOT WANT TO LEAVE 5555 BANCROFT AVE. BOATLEY SAID SHE WENT BACK TO SLEEP AND WAS AWAKEN BY O.P.D. OFC D. VANTREE TOOK A WRITTEN STATEMENT FROM BOATLEY, LAKISA.

REPORTED BY	SERIAL #	WATCH	DISTRICT	SUPERVISOR	SERIAL #	PAGE 5 OF 9
D. THURSTON	8262P	1	5	LT. WILLIAMS		

536-937 (1/97)

ORI 00109

ADDITIONAL INFORMATION REPORT

OAKLAND POLICE DEPARTMENT
455 - 7th Street
Oakland, CA 94607

RD # 004/11/20

CRIME	[ ] SUPPLEMENTAL	INCIDENT #	V1	VICTIM LAST, First, Mid.
187 P.C		70	V1	BROWN, GERALD

SUSPECT LAST, First Mid.	INCIDENT LOCATION	DATE OF THIS REPORT	ORIGINAL DATE REPORTED
UNK	IFO 5555 BANCROFT AVE	15 MAY 20	

ITEM # | QNTY | PROPERTY and/or NARRATIVE: ITEM TYPE, BRAND, MODEL #, SIZE, CODE OR MARKS, ETC. | SERIAL # | VALUE

SUMMARY CONT: OFC C. BOLTON 8296 P RESPONDED TO 5555 BANCROFT AVE # B AND SPOKE TO MELTON, CARNELL WHO SAID BROWN WAS INSIDE OF THE APARTMENT LOCATED AT 5555 BANCROFT AVE #B AT ABOUT 2100 HRS OR 2200 HRS. MELTON SAID SHE WENT TO SLEEP AND DID NOT HEAR ANY GUN SHOTS OR ARGUING OUT SIDE. MELTON SAID SHE WAS AWAKEN BY BOATLEY INFORMING HER THE POLICE WAS OUTSIDE. OFC C. BOLTON 8296 P TOOK A WRITTEN STATEMENT FROM MELTON, CARNELL.

SEE OFC BILETNIKOFF 8011 P, OFC B. ORTIZ 8132 P, OFC D. WARD 8293 P OFC N. CERECEDES 8275 P FOR CANVASS RESULTS.

TECH A. COOGLER 4312 P RESPONDED AND PROCESSED THE SCENE. SEE HER TECH REPORT FOR DETAILS OF THE SCENE AND RELEVANT EVIDENCE.

SGT GRIMES, RESPONDED TO THE SCENE, COORDINATED THE ACTIVITIES OF RESPONDING OFFICERS, AND CALLED OUT THE HOMICIDE INVESTIGATORS SGTS CRUZ AND MEDEIROS.

TECH D. OARE RESPONDED TO SCENE

MY INVESTIGATION REVEALED BROWN WAS SHOT NUMEROUS TIMES BY AN UNK SUSPECT. BROWN WAS TRANSPORTED TO ACH WHERE HE PRONOUNCED DEAD A 0116 HRS BY DR. UREELAND.

REPORTED BY	SERIAL #	WATCH	DISTRICT	SUPERVISOR	SERIAL #	PAGE
D. THURSTON	8262 P	1	5	LT. WILLIAMS		PAGE 6 OF 8

536-937 (1/97)

OPD POLICE REPORT — Victim Witness

Oakland Police Department
455 - 7th Street
Oakland, CA 94607

RD # 004/4/20

CRIME	INCIDENT NO.	V1	VICTIM LAST, First, Mid. [ ] Business Name
187 P.C.	70		BROWN, GERALD

ADDITIONAL PERSONS — CLASS: V W R/P — LINKED TO: V R/P W S

	LAST, First, Mid [ ] Business Name	SEX	RACE	D.O.B.	AGE
	ONEAL, LATACHA	F	B		

HOME ADDRESS: 5601 HILTON ST — CITY: [X] OAKLAND — ZIP — HOME PHONE ( )
BUSINESS ADDRESS / SCHOOL — CITY: [ ] OAKLAND — ZIP — WORK PHONE ( )
OCCUPATION — WORKING HOURS — D.L. NUMBER/STATE

VICTIM ACTIVITY: (Check All That Apply) [ ] AT HOME [ ] AT WORK [ ] ON STREET [ ] ON VACATION [ ] IN HOSPITAL [ ] IN JAIL [ ] WALKING [ ] JOGGING [ ] DRIVING [ ] SLEEPING [ ] AT SCHOOL [ ] AT PARK [ ] SHOPPING CNTR

CLASS: W/P	LINKED TO: V	LAST, First, Mid [ ] Business Name	SEX	RACE	D.O.B.	AGE
		O. F. D # 2558				

HOME ADDRESS — CITY — [ ] OAKLAND — ZIP — HOME PHONE ( )
BUSINESS ADDRESS / SCHOOL — CITY — [ ] OAKLAND — ZIP — WORK PHONE ( )
OCCUPATION — WORKING HOURS — D.L. NUMBER/STATE

VICTIM ACTIVITY: (Check All That Apply) [ ] AT HOME [ ] AT WORK [ ] ON STREET [ ] ON VACATION [ ] IN HOSPITAL [ ] IN JAIL [ ] WALKING [ ] JOGGING [ ] DRIVING [ ] SLEEPING [ ] AT SCHOOL [ ] AT PARK [ ] SHOPPING CNTR

CLASS: W/P	LINKED TO: V	LAST, First, Mid [ ] Business Name	SEX	RACE	D.O.B.	AGE
		AMR # 501				

HOME ADDRESS — CITY — [ ] OAKLAND — ZIP — HOME PHONE ( )
BUSINESS ADDRESS / SCHOOL — CITY — [ ] OAKLAND — ZIP — WORK PHONE ( )
OCCUPATION — WORKING HOURS — D.L. NUMBER/STATE

VICTIM ACTIVITY: (Check All That Apply) [ ] AT HOME [ ] AT WORK [ ] ON STREET [ ] ON VACATION [ ] IN HOSPITAL [ ] IN JAIL [ ] WALKING [ ] JOGGING [ ] DRIVING [ ] SLEEPING [ ] AT SCHOOL [ ] AT PARK [ ] SHOPPING CNTR

CLASS: W/P	LINKED TO: V	LAST, First, Mid [ ] Business Name	SEX	RACE	D.O.B.	AGE
		B. ORTIZ 8132 P				

HOME ADDRESS — CITY — [ ] OAKLAND — ZIP — HOME PHONE ( )
BUSINESS ADDRESS / SCHOOL: O. P. D — CITY — [ ] OAKLAND — ZIP — WORK PHONE ( )
OCCUPATION — WORKING HOURS — D.L. NUMBER/STATE

VICTIM ACTIVITY: (Check All That Apply) [ ] AT HOME [ ] AT WORK [ ] ON STREET [ ] ON VACATION [ ] IN HOSPITAL [ ] IN JAIL [ ] WALKING [ ] JOGGING [ ] DRIVING [ ] SLEEPING [ ] AT SCHOOL [ ] AT PARK [ ] SHOPPING CNTR

CLASS: W/P	LINKED TO: V	LAST, First, Mid [ ] Business Name	SEX	RACE	D.O.B.	AGE
		D. VANTREE 8198 P				

HOME ADDRESS — CITY — [ ] OAKLAND — ZIP — HOME PHONE ( )
BUSINESS ADDRESS / SCHOOL: O. P. D — CITY — [ ] OAKLAND — ZIP — WORK PHONE ( )
OCCUPATION — WORKING HOURS — D.L. NUMBER/STATE

VICTIM ACTIVITY: (Check All That Apply) [ ] AT HOME [ ] AT WORK [ ] ON STREET [ ] ON VACATION [ ] IN HOSPITAL [ ] IN JAIL [ ] WALKING [ ] JOGGING [ ] DRIVING [ ] SLEEPING [ ] AT SCHOOL [ ] AT PARK [ ] SHOPPING CNTR

REPORTED BY	SERIAL #	WATCH	DISTRICT	SUPERVISOR	SERIAL #	PAGE
D THURSTON	8262P	1	5	LT. WILLIAMS		7 OF 8

OPD POLICE REPORT — Victim Witness

Oakland Police Department
455 - 7th Street
Oakland, CA 94607

RD # 004420

CRIME	INCIDENT NO.		VICTIM LAST, First, Mid. [ ] Business Name
187. P.C.	70	V1	BROWN, GERALD

ADDITIONAL PERSONS — CLASS: V W R/P — LINKED TO: V R/P W S

CLASS	LINKED TO	LAST, First, Mid [ ] Business Name	SEX	RACE	D.O.B.	AGE
R/P	V	STOT GRIMES				

HOME ADDRESS | CITY | [ ] OAKLAND | ZIP | HOME PHONE ( )

BUSINESS ADDRESS / SCHOOL: O. P.D | CITY | [ ] OAKLAND | ZIP | WORK PHONE ( )

OCCUPATION | WORKING HOURS | D.L. NUMBER /STATE

VICTIM ACTIVITY: (Check All That Apply) [ ] AT HOME [ ] AT WORK [ ] ON STREET [ ] ON VACATION [ ] IN HOSPITAL [ ] IN JAIL [ ] WALKING [ ] JOGGING [ ] DRIVING [ ] SLEEPING [ ] AT SCHOOL [ ] AT PARK [ ] SHOPPING CNTR

CLASS	LINKED TO	LAST, First, Mid [ ] Business Name	SEX	RACE	D.O.B.	AGE
R/P	V	OFC D. WARD 8293 P				

HOME ADDRESS | CITY | [ ] OAKLAND | ZIP | HOME PHONE ( )

BUSINESS ADDRESS / SCHOOL: O. P. D | CITY | [ ] OAKLAND | ZIP | WORK PHONE ( )

OCCUPATION | WORKING HOURS | D.L. NUMBER/STATE

VICTIM ACTIVITY: (Check All That Apply) [ ] AT HOME [ ] AT WORK [ ] ON STREET [ ] ON VACATION [ ] IN HOSPITAL [ ] IN JAIL [ ] WALKING [ ] JOGGING [ ] DRIVING [ ] SLEEPING [ ] AT SCHOOL [ ] AT PARK [ ] SHOPPING CNTR

CLASS	LINKED TO	LAST, First, Mid [ ] Business Name	SEX	RACE	D.O.B.	AGE
R/P	V	TECH COOGLER				

HOME ADDRESS | CITY | [ ] OAKLAND | ZIP | HOME PHONE ( )

BUSINESS ADDRESS / SCHOOL | CITY | [ ] OAKLAND | ZIP | WORK PHONE ( )

OCCUPATION | WORKING HOURS | D.L. NUMBER/STATE

VICTIM ACTIVITY: (Check All That Apply) [ ] AT HOME [ ] AT WORK [ ] ON STREET [ ] ON VACATION [ ] IN HOSPITAL [ ] IN JAIL [ ] WALKING [ ] JOGGING [ ] DRIVING [ ] SLEEPING [ ] AT SCHOOL [ ] AT PARK [ ] SHOPPING CNTR

CLASS	LINKED TO	LAST, First, Mid [ ] Business Name	SEX	RACE	D.O.B.	AGE

HOME ADDRESS | CITY | [ ] OAKLAND | ZIP | HOME PHONE ( )

BUSINESS ADDRESS / SCHOOL | CITY | [ ] OAKLAND | ZIP | WORK PHONE ( )

OCCUPATION | WORKING HOURS | D.L. NUMBER/STATE

VICTIM ACTIVITY: (Check All That Apply) [ ] AT HOME [ ] AT WORK [ ] ON STREET [ ] ON VACATION [ ] IN HOSPITAL [ ] IN JAIL [ ] WALKING [ ] JOGGING [ ] DRIVING [ ] SLEEPING [ ] AT SCHOOL [ ] AT PARK [ ] SHOPPING CNTR

CLASS	LINKED TO	LAST, First, Mid [ ] Business Name	SEX	RACE	D.O.B.	AGE

HOME ADDRESS | CITY | [ ] OAKLAND | ZIP | HOME PHONE ( )

BUSINESS ADDRESS / SCHOOL | CITY | [ ] OAKLAND | ZIP | WORK PHONE ( )

OCCUPATION | WORKING HOURS | D.L. NUMBER/STATE

VICTIM ACTIVITY: (Check All That Apply) [ ] AT HOME [ ] AT WORK [ ] ON STREET [ ] ON VACATION [ ] IN HOSPITAL [ ] IN JAIL [ ] WALKING [ ] JOGGING [ ] DRIVING [ ] SLEEPING [ ] AT SCHOOL [ ] AT PARK [ ] SHOPPING CNTR

REPORTED BY	SERIAL #	WATCH	DISTRICT	SUPERVISOR	SERIAL #	PAGE
D. THURSTON	8262P	1	5	LT. WILLIAMS		9 OF 9

TF-3042 (4NOV94)

ORI 00109